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BEFORE AND AFTER THE TREATY OF
WASHINGTON: THE AMERICAN
CIVIL WAR AND THE WAR
IN THE TRANSVAAL

AN ADDRESS

DELIVERED BEFORE THE

NEW YORK HISTORICAL SOCIETY

ON ITS

100TH ANNIVERSARY.

TUESDAY

19, 1901.

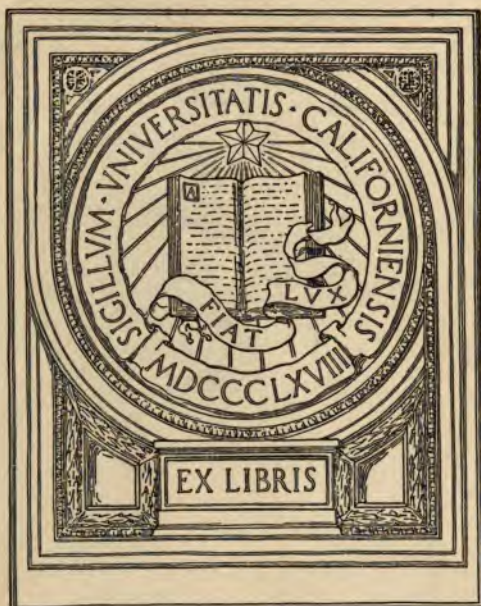
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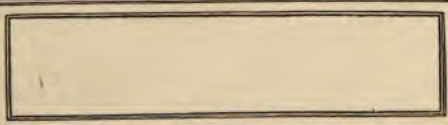


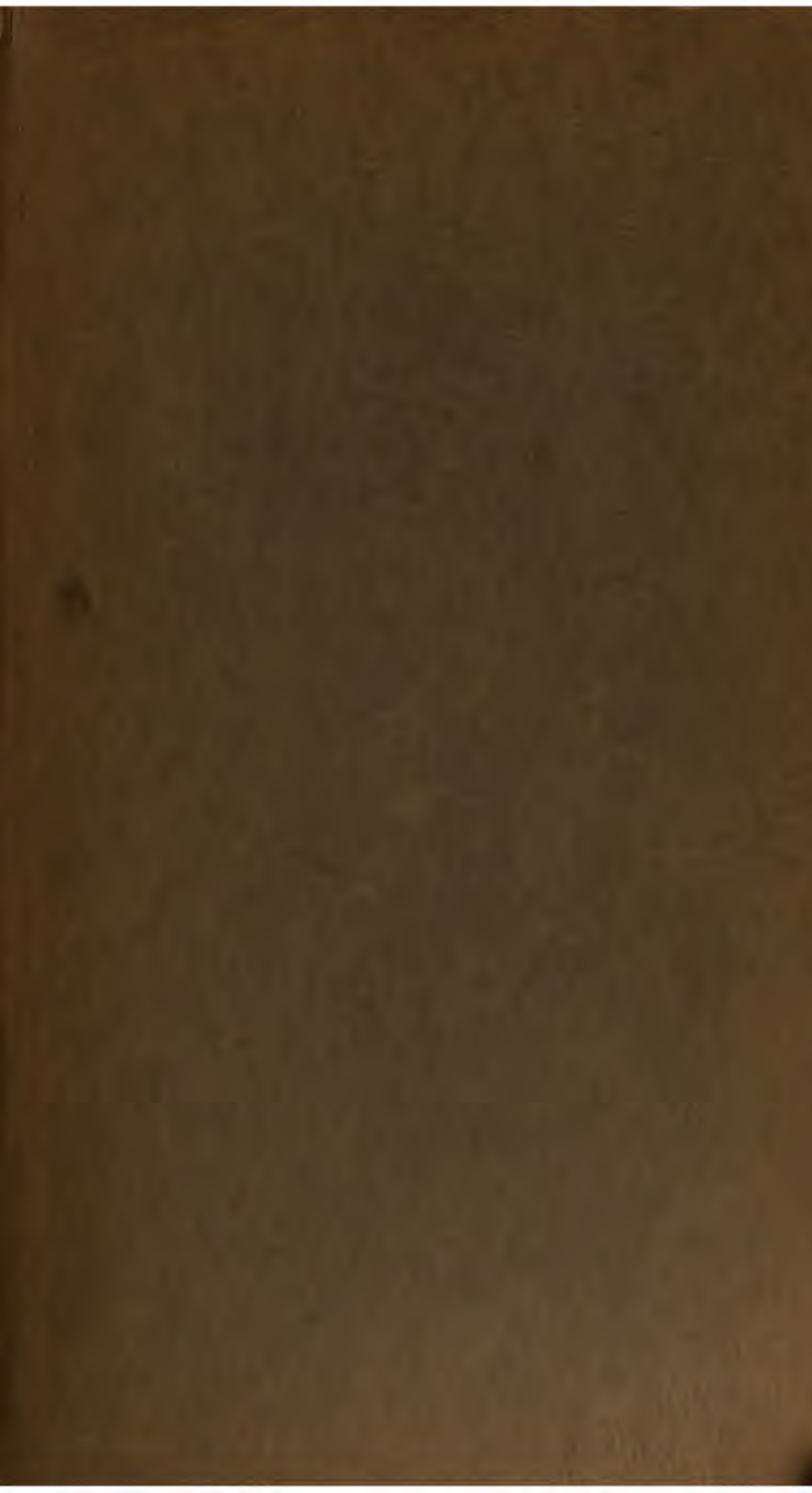
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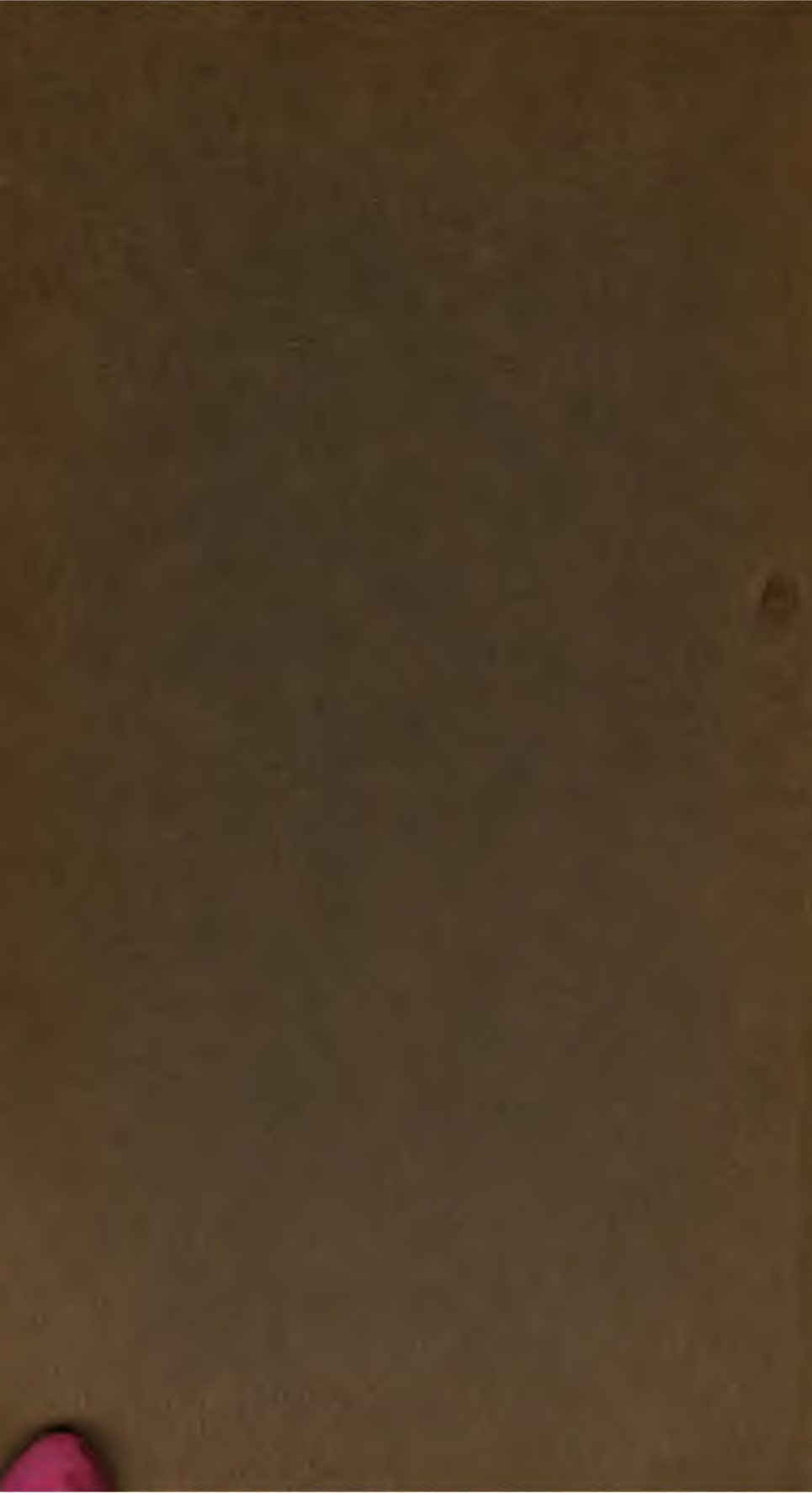
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BEFORE AND AFTER THE TREATY OF
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AN ADDRESS

DELIVERED BEFORE THE

NEW YORK HISTORICAL SOCIETY

ON ITS

NINETY-SEVENTH ANNIVERSARY,

TUESDAY, NOVEMBER 19, 1901,

BY

CHARLES FRANCIS ADAMS, LL.D.

President of the Massachusetts Historical Society.



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AT a meeting of the NEW YORK HISTORICAL SOCIETY, held in its Hall on Tuesday evening, November 19th, 1901, to celebrate the Ninety-seventh Anniversary of the founding of the Society, Charles Francis Adams, LL.D., President of the Massachusetts Historical Society, delivered the address, entitled: "Before and After the Treaty of Washington: The American Civil War and the War in the Transvaal."

Upon its conclusion Mr. A. V. W. Van Vechten submitted, with remarks, the following resolution:

Resolved, That the thanks of the Society be presented to Mr. Adams for his instructive and interesting address before the Society this evening, and that a copy be requested for publication.

The resolution was seconded by Mr. William P. Prentice.

The resolution was then adopted unanimously.

Extract from the minutes,

SYDNEY H. CARNEY, JR.,

Recording Secretary.

BEFORE AND AFTER THE TREATY
OF WASHINGTON: THE AMERICAN
CIVIL WAR AND THE WAR IN THE
TRANSVAAL.

NEGOTIATED during the spring of 1871, and signed on the 8th of May of that year, the Treaty of Washington not only put to rest questions of difference of long standing, big with danger, between the two leading maritime nations of the world, but it incorporated new principles of the first importance into the body of established International Law. The degree, moreover, to which that treaty has influenced, and is now influencing, the course of human affairs and historical evolution in both hemispheres is, I think, little appreciated. To that subject I propose this evening to address myself.

The time to make use of unpublished material bearing on this period—material not found in newspapers, public archives or memoirs which have already seen the light—has, moreover, come. So far as any considerable political or diplomatic result can be said to be the work of one man, the Treaty of Washington was the work of Hamilton Fish. Mr. Fish died in September, 1893—now over eight years ago. When the treaty was negotiated General Grant was President; and General Grant has been dead more than sixteen years. In speaking

of this treaty, and describing the complications which led up to it and to which it incidentally gave rise, frequent reference must be made to Charles Sumner and John Lothrop Motley; and, while Mr. Sumner died nearly twenty-eight years ago, Mr. Motley followed him by a little more than three years only. Thus between the 11th of March, 1874, and the 7th of September, 1893, all those I have named—prominent actors in the drama I am to describe—passed from the stage. They belonged to a generation that is gone. Other public characters have since come forward; new issues have presented themselves. The once famous *Alabama* claims are now “ancient history,” and the average man of to-day hardly knows what is referred to when allusion is made to “Consequential Damages” or “National Injuries” in connection therewith; indeed, why should he, for when, in May, 1872, that issue was finally put to rest, he who is now (1901) President of the United States was a boy in his fourteenth year. None the less, as the Treaty of Washington was a very memorable historical event, so President Grant, Secretary Fish, Senator Sumner and Minister Motley are great historic figures. Their achievements and dissensions have already been much discussed, and will be more discussed hereafter; and to that discussion I propose now to contribute something. My theme includes the closing scene of a great drama; a scene in the development of which the striking play of individual character will long retain an interest.

History aside, moreover, the Treaty of Washington itself is a living, and it may even be said a con-

trolling factor in the international situation of to-day :

“ And enterprises of great pith and moment
With this regard their currents turn awry,
And lose the name of action.”

That treaty was signed on the 8th of May, 1871; the battle of Majuba Hill took place nine years from the following 27th of February. The two events occurred on different sides of the equator and of the Atlantic ocean; they apparently had as little bearing on each other as it was possible for two incidents to have; and yet the logical outcome of the latter event was included and forestalled in the settlement effected through the earlier.

I

Between 1861 and 1865 the United States was engaged in a struggle which called for the exertion of all the force at its command; as, to a lesser extent, Great Britain is now. The similarity between the war in South Africa and the Confederate War in this country early attracted the attention of English writers, and one of the most thoughtful of their civil and military critics has put on record a detailed comparison of the two.* “ Each of these conflicts,” this authority asserts, “ had its origin in conditions of long and gradual growth, rendering an ultimate explosion inevitable. Each of them deeply affected the whole existence of the communities which found themselves in antagonism. In each case, therefore, the energy and the duration of the fighting far exceeded the expectations of

* Spenser Wilkinson, *War and Policy* (1891), pp. 419-36.

most of those who might have seemed to be in a position to judge." To the same effect, another author* refers to the "striking resemblance" between the two struggles. "The analogy," he says, "like any other historical analogy, must not be pressed too far, but there is a remarkable parallelism in the general character of the political issues, in the course of negotiations preceding war, and in the actual conduct of the campaigns, a parallelism which sometimes comes out in the most insignificant details." This analogy the writer might advantageously have carried into his discussion of the effect of both wars on foreign opinion at the time of each. He correctly enough admits that, during the struggle in South Africa—"The whole of Europe almost was against us, not so much from any consideration of the merits of the case, as from the dislike and jealousy of England which have developed so enormously in the last decade"; but he significantly adds—"In the United States sympathies were much divided." In fact, during our Civil War the entire sympathies and hearty good-will of the great body of those composing what are known as the governing and influential classes throughout Europe west of the Vistula, were enlisted on the side of the Confederacy. In these classes would be included all those of rank, members of the learned professions, the commercial, financial and banking circles, and officers of the two services, the Army and the Navy. And, then also as in the case of the South African war, this instructive accord arose, not "from any consideration of the merits of the case," but from "dislike and jealousy";—the dislike and jealousy

* The Times's *History of the War in South Africa*.

of American democracy, which "had developed so enormously in the course" of the decade or two immediately preceding the outbreak of 1861. Especially was this true of England; there "sympathies were much divided," but the line of cleavage was horizontal, not perpendicular. The poor, the lowly and the conscientious instinctively sympathized with the Union and the North; while of the privileged and the moneyed, the commercial and manufacturing classes, it may safely be asserted that nine out of ten were heart and soul on the side of the rebel and slaveholder. It is only necessary for me further to premise that as respects foreign governments, and the principles of international law and amity relating to the concession of belligerent rights,—the recognition of nationality, neutrality, and participation of neutrals, direct and indirect, in the operations of war,—the position of the Confederacy and of the two South African republics were in essentials the same. The latter, it is true, were not maritime countries, so that no questions of blockade, and comparatively few of contraband, arose; but, on the other hand, while the Confederates were, as respects foreign nations, insurgents pure and simple, the South African republics had governments *de jure* as well as *de facto*. Great Britain claimed over them a species of suzerainty only, undefined at best, and plainly questionable by any power disinclined to recognize it. This the British authorities * deplore, and try to explain away; but the fact is not denied.

So far, therefore, as the status of those in arms against a government claiming sovereignty is of

* The Times's *History*, vol. i., chap. 4.

moment, the position of the South African republics was, in 1900, far stronger with all nations on terms of amity with Great Britain than was the position of the Confederacy in 1861-62 with nations then at amity with the United States. It consequently followed that any precedent created, or rule laid down, by a neutral for its own guidance in international relations during the first struggle was applicable in the second, except in so far as such rule or precedent had been modified or set aside by mutual agreement of the parties concerned during the intervening years. What then were these rules and precedents established by Great Britain in its dealings with the United States in 1861-5, which, unless altered by mutual consent during the intervening time, would have been applicable by the United States to Great Britain in 1899-1901?

In the opening pages of his account of the doings of the agents of the Confederacy in Europe during our Civil war, Captain James A. Bulloch, of the Confederate States Navy, the most trusted and efficient of those agents, says that "the Confederate government made great efforts to organize a naval force abroad"; and he adds, truly enough, "that the naval operations of the Confederate States which were [thus] organized abroad, possess an importance and attraction greater than their relative effect upon the issue of the struggle." Captain Bulloch might well have gone further. He might have added that, in connection with those operations, the public men, high officials, courts of law and colonial authorities of Great Britain more especially, supported by the press and general public opinion of that country, labored conjointly

and strenuously, blindly and successfully, to build up a structure of rules and precedents, not less complete and solid than well calculated, whenever the turn of Great Britain might come,—as come in time it surely would,—to work the downfall of the Empire. As that record carries in it a lesson of deep significance to all entrusted with the temporary administration of national affairs, it should neither be forgotten nor ignored. It is well that statesmen, also, should occasionally be reminded that, with nations as with individuals, there is a to-morrow, and the whirligig of time ever brings on its revenges. “All things come to him who waits”; and the motto of the House of Ravenswood was—“I bide my time.”

When hostilities broke out in April, 1861, the so-called Confederate States of America did not have within their own limits any of the essentials to a maritime warfare. With a long coast line and numerous harbors, in itself and by itself, so far as aggressive action was concerned, it could not be, or be made, a base of naval operations. It had no machine-shops nor yards; no ship-wrights, and no collection of material for ship-building or the equipment of ships. In the days when rebellion was as yet only incipient, it was correctly deemed of prime importance to get cruisers; but a diligent search throughout the ports of the Confederacy disclosed but one small steamer at all adapted for a cruising service. Under these circumstances the minds of those composing the as yet embryotic government at Montgomery turned naturally to Europe; and, in the early days of May, 1861, immediately after the reduction of Fort Sumter, a

scheme was matured for making Great Britain the base of Confederate naval operations against the United States. The nature and scope of the British statutes had been looked into ; the probability of the early issuance of a proclamation of neutrality by the government of Great Britain was considered, and the officials of the Confederate Naval Department were already confident that the Montgomery government would be recognized by European powers as a *de facto* organization. To it, as such, belligerent rights would be conceded ; and, in such case, the maritime shelter and privileges common to belligerents under the amity of nations, would be granted to its regularly commissioned cruisers.

The officers in question next looked about for some competent Confederate sympathizer, who might be despatched to Europe and there be a species of Secretary *in partibus*. They decided upon James A. Bulloch, at the time a lieutenant in the United States Navy detailed by the Government for the command of the *Bienville*, a privately owned mail steamer running between New York and New Orleans. A Georgian by birth and appointment, Lieutenant Bulloch went with his State, and at once after Georgia seceded put himself at the disposal of the Confederate government. He was requested forthwith to report at Montgomery ; and there, on the 8th and 9th of May he received from S. K. Mallory, the Confederate Naval Secretary, verbal instructions covering all essential points of procedure. On the night of the 9th of May, Bulloch left Montgomery for Liverpool, his duly designated seat of operations. Arriving there on

the 4th of June, Secretary Mallory's assistant at once entered on his duties, not only purchasing naval supplies, but, before the close of the month he had contracted with a Liverpool ship-builder for the construction of a cruiser, and it was already partly in frame. The Queen's proclamation of neutrality had then been issued some six weeks. The vessel now on the stocks was at first called the *Oreto*; afterwards it attained an international celebrity as the *Florida*. Acting with an energy which quite justified his selection for the work of the Confederacy then in hand to be done, Captain Bulloch on the first of the following August entered into another contract, this time with the Messrs. Laird, under which the keel of a second cruiser was immediately afterwards laid in the yards of that firm at Birkenhead. The purpose of the Confederate government was well defined. It was not merely to buy or build single vessels of war in British ports and dockyards, but it was proposed to maintain in Liverpool a permanent representative of its Navy Department,—a species of branch office, or bureau, with a deputy secretary at its head,—and, through him, using the ports of the Mersey, the Clyde and the Thames as arsenals, to construct ships, and secure naval supplies, so long as the war might last. No real hindrance was anticipated. In other words, Great Britain was to be made the base of an organized maritime warfare against the United States, the Confederacy itself being confessedly unable to conduct such a warfare from within its own limits. The single question was—Would Great Britain permit itself to be thus used as a naval base and arsenal for the

construction, equipment and despatch of commerce-destroyers and battle ships intended to be used against a nation with which it was at peace?

Excepting only the good faith, friendly purpose and apparently obvious self-interest of a civilized government in the last half of the nineteenth century, the provisions of the British Foreign Enlistment Act of 1819 constituted the only barrier in the way of the consummation of this extraordinary project,—a project which all will now agree was tantamount to a proposal that, so far as commerce-destroyers were concerned, the first maritime nation of the world should become an accomplice in piracy before the fact. As the date of its enactment (1819) implies, the British Foreign Enlistment Act was passed at the time of the troubles incident to the separation of its American dependencies from Spain, and was designed to prevent the fitting out in British ports of piratical expeditions against Spanish commerce, under cover of letters-of-marque, &c., issued by South American insurrectionary governments. Owing to the long peace which ensued on its passage, the Act had slept innocuously on the statute book, no case involving a forfeiture ever having been brought to trial under it. It was an instance of desuetude, covering more than forty years.

A clumsy, cumbersome statute, the Foreign Enlistment Act was, after the manner of English Acts of Parliament, overloaded with a mass of phrases, alike unprecise and confused, with so much of tedious superfluity of immaterial circumstance "as to suggest a suspicion that it must have been" specially designed to give scope to bar chicanery, to

facilitate the escape of offenders, and to embarrass and confound the officers of the government charged with the administration of law. It was, in short, one of those statutes in which the British Parliamentary draughtsman has prescriptively revelled, and through the clauses of which judge and barrister love, as the phrase goes, to drive a coach-and-six. But it so chanced that, in the present case, the coach-and-six had, as passengers, the whole British ministry, and, in it, they were doomed to flounder pitifully along "in the flat morass of [a] meaningless verbosity and confused circumlocution." * Upon the proper construction of this notable act, the Confederate representatives at once sought the opinion of counsel; and they were presently advised that, under its provisions, it would be an offense for a British subject to build, arm *and* equip a vessel to cruise against the commerce of a friendly state; but the mere building of a ship, though with the full intent of so using her, was no offense; nor was it an offense to equip a vessel so built, if it was without the intent so to use her. To constitute an offense the two acts of building a ship with intent of hostile use, and equipping the same must be combined; and the things must be done in British waters. It hence followed that, under the Act, it was lawful for an English firm to build a ship in a British ship-yard designed purposely to prey on American commerce; it was also lawful to sell or buy the articles of necessary equipment for such vessel, from cordage to arms and ammunition; but the articles of equipment must not go into the vessel, thus making of her a com-

* Geneva Arbitration; *Argument of the United States*, p. 61.

plete cruiser, within British maritime jurisdiction. The final act of conjunction must be effected at some distance greater than one league from where a British writ ran. Assuming this construction of the Foreign Enlistment Act to be correct, its evasion was simple. It could be enforced practically only with a government strong enough to decline to allow its international obligations to be trifled with. If, however, those in office evinced the slightest indifference respecting the enforcement of international obligations, and much more if the government was infected by any spirit of connivance, the act at once became a statute mockery.

In any large view of policy Great Britain then was, as it now is, under strong inducement to insist on the highest standard of international maritime observance. As the foremost ocean-carrier of the world, it ill became her to connive at commerce destroying. But, in 1861, Great Britain had a divided interest; and British money-making instincts are well-developed. She was the arsenal and ship-builder of the world, as well as its ocean-carrier. Her artizans could launch from private dock-yards vessels of any size, designed for any purpose, thoroughly equipped whether for peace or war; and all at the shortest possible notice. Under ordinary circumstances, this was a legitimate branch of industry. It admitted, however, of easy perversion; and the question in 1861 was whether the first of commercial nations would permit its laws to be so construed as to establish the principle that, in case of war, any neutral might convert its ports into nurseries of corsairs for the use or injury of either belligerent, or of both. This was the

exact use the Confederacy in 1861 deliberately designed to make of Great Britain. As its authorized agent and representative twenty years later expressed it,—“The object of the Confederate Government was not merely to buy or build a single ship, but it was to maintain a permanent representative of the Navy Department [in Great Britain] and to get ships and naval supplies without hindrance as long as the war lasted.”*

It is now necessary briefly to recall a once familiar record showing the extent to which Great Britain lent itself to this scheme, and the precedents it created while so doing. All through the later summer of 1861—the months following the disgrace of Bull Run and the incident of the *Trent*,—the work of Confederate naval construction was pushed vigorously along in the Liverpool and Birkenhead ship-yards. Hardly any concealment was attempted of the purpose for which the *Oreto* and the “290,”—as the two vessels were called or designated,—was designed. As the work on them progressed, it was openly supervised by agents known to be in the Confederate employ, while British government officials, having free access to the yards, looked to it that the empty letter of the law was observed. Never was a solemn mockery more carefully enacted; never was there a more insulting pretence at the observance of international obligations; never a more perfect instance of connivance at a contemplated crime, though not so nominated in the bond.

The *Florida*, we are told by Captain Bulloch, was the first regularly built war vessel of the Con-

* Bulloch, *The Secret Service of the Confederate States in Europe*, vol. i, p. 65; vol. ii, p. 216.

federate States Navy. "She has," he wrote at the time, "been twice inspected by the Custom House authorities, in compliance with specific orders from the Foreign Office. * * * The hammock-nettings, ports, and general appearance of the ship sufficiently indicate the ultimate object of her construction, but * * * registered as an English ship, in the name of an Englishman, commanded by an Englishman, with a regular official number under the direction of the Board of Trade, she seems to be perfectly secure against capture or interference, until an attempt is made to arm her." Another vessel, carrying the armament of this contemplated commerce-destroyer, left England at so nearly the same time as the *Oreto* that those in charge of the latter vessel increased her speed, being apprehensive that their consort would arrive at the point of rendezvous first. Making Nassau, an English port, the last pretence at concealment as to character and destination disappeared, in consequence of the heedless talk of a Confederate officer there to join her; a portion of her crew, also, immediately reported to the British naval commander at the station that the vessel's destination could not be ascertained. She was seized; but, after some legal forms and a pretence of a hearing, a decree of restoration was entered. Subsequently, before being herself destroyed, she captured, and burnt or bonded, some seventy vessels carrying the United States flag. A precedent complete at every point had been created.

Relying on the advice of counsel and the experience gained in the case of the *Florida*, there was absolutely no concealment of purpose even at-

tempted as respects the *Alabama*. Built under a contract entered into with the avowed agent of the Confederacy, that the "290" was designed as a Confederate commerce-destroyer was town talk in Liverpool, — "quite notorious," as the American consul expressed it. She was launched on the 15th of May, 1862, as the *Enrico*, "with no attempt," as Captain Bulloch testifies, "to deceive any one by any pretence whatever." Everything was done in the "ordinary commonplace way," and "no mystery or disguise" was deemed necessary.* The Lairds knew that they were building a cruiser for the Confederate government, specially constructed as a commerce-destroyer; and they carefully observed what their counsel advised them was the law of the land. They simply built a vessel designed to do certain work in a war then in progress; the equipment of that vessel, including its armament, was in course of preparation elsewhere. Of that they knew nothing. They were not informed; nor, naturally, did they care to ask. The vessel and her equipment would come together outside of British jurisdiction. Such was the law; Great Britain lived under a government of law; and "to strain the law" the government was in no way inclined. The agents of the Confederacy, moreover, "had the means of knowing with well-nigh absolute certainty what was the state of the negotiations between the United States minister and Her Majesty's government."† The work of completion was, however, pressed forward with significant energy after the launching of the vessel; so that, by the middle of June, she went out on a trial trip. An Englishman,

* Bulloch, vol. ii, p. 229.

† *Ibid.*, vol. i, pp. 229, 260-1.

having a Board of Trade certificate, was then engaged "merely to take the ship to an appointed place without the United Kingdom," where she was to meet a consort bearing her armament.

That armament was in course of preparation elsewhere in Great Britain, and included "everything required for the complete equipment of a man-of-war." The goods, when ready, were "packed, marked, and held for shipping orders." The *Agrippina*, a suitable barque of 400 tons measurement, was then purchased, and quietly loaded at the London docks. Between the two vessels—the one building on the Mersey, the other taking on board a cargo in the Thames—there was no apparent connection. Every arrangement for the destruction of the commerce of a nation at peace with Great Britain was being made under the eyes of the customs officials, but with scrupulous regard to the provisions of the Foreign Enlistment Act.

A single word from the British Foreign Office would then have sufficed to put a stop to the whole scheme. That office was fully advised by the American minister of what was common town-talk at Liverpool. The Confederate agent there in charge of operations was as well known as the Collector of the Port. Had those then officially responsible for Great Britain's honor and interests been in earnest, public notice would have been given to all concerned, including belligerents,—under the designation of evil-disposed persons,—that Her Majesty's government did not propose to have Great Britain's neutrality trifled with or the laws evaded. Her ports were not to be made, by either belligerent, directly or through evasion, a basis of naval opera-

tions against the other. Any ship constructed for warlike purposes, upon the builders of which notice had been served at the application of either belligerent, would be held affected by such notice; and thereafter, in case of evasion, would not be entitled to the rights of hospitality in any British waters. Whether, under the principles of international law, such vessel could be held so tainted by evasion after notice as to be subject to seizure and detention whenever and wherever found within British jurisdiction, would be matter of further consideration. This course was one authorized by international law, and well understood at the time. The Attorney General, for instance, in debate declared—"I have not the least doubt that we have a right, if we thought fit, to exclude from our own ports any particular ship or class of ships, if we consider that they have violated our neutrality." And, three months before the first law adviser of the Crown thus expressed himself, Sir Vernon Harcourt had said in a letter published in the *Times*—"I think that to deny to the *Florida* and to the *Alabama* access to our ports would be the legitimate and dignified manner of expressing our disapproval of the fraud which has been practiced on our neutrality. If we abstain from taking such a course, I fear we may justly lie under the imputation of having done less to vindicate our good faith than the American government consented at our instance, upon former occasions, to do." Finally, England's Chief Justice laid down the rule in the following broad terms,—“A sovereign has absolute dominion in and over his own ports and waters. He can permit the entrance into them to the ships of other nations, or refuse it; he

can grant it to some, can deny it to others ; he can subject it to such restrictions, conditions, or regulations as he pleases. But, by the universal comity of nations, in the absence of such restrictions of prohibition, the ports and waters of every nation are open to all comers." *

Unless, therefore, the British ministry was willing to stand forward as openly conniving at proceedings calculated to bring into contempt the law and the Queen's proclamation, the course to be pursued was plain ; and the mere declaration of a purpose to pursue that course, while it would in no way have interfered with legitimate ship construction, would have put an immediate stop to the building and equipment of commerce-destroyers. The law, even as it then stood, was sufficient, had the government only declared a purpose. Had the will been there, a way had not been far to seek.

No such notice was conveyed. In vain the American minister protested. No evidence as to the character of the proposed cruiser, or the purpose for which she was designed, possible for him to adduce, was adjudged satisfactory ; and, finally, when the case became so flagrant that action could not in decency be delayed,† a timely intimation

* Papers Relating to the Treaty of Washington (Ed. 1872), vol. iv, pp. 416, 418.

† Much has been written, and more said, as to the particular person upon whom rested responsibility for the evasion of the *Alabama*. Collusion on the part of officers has been charged, and it was at one time even alleged that Mr. S. Price Edwards, then collector of the port of Liverpool, had been the recipient of a bribe. This is emphatically denied by Captain Bulloch (vol. i, pp. 258-64) and no evidence has ever come to light upon which to rest such an improbable imputation. Under these circumstances the following intensely characteristic avowal of Earl Russell, in his volume of *Recollections*

reached the Confederate agent through some unknown channel, and, on the 28th of July, 1862, the *Alabama* went out on a trial trip at the mouth of the Mersey, from which she did not return. With British papers, and flying the British flag, she three days later got under weigh for the Azores. At almost the same hour, moving under orders from the Confederate European Naval Bureau at Liverpool, her consort, the *Agrippina*, loaded with munitions and equipment, cleared from London. The two met at the place designated; and there, outside of British jurisdiction, the stores, arms and equipment were duly transferred. A few days later, the forms of transfer having been gone through with, the British master turned the ship over to the Confederate commander, his commission was read and the Confederate flag run up. After which somewhat empty ceremonies, the "290," now the *Alabama*, stood purified of any evasion of English law, and, as a duly commissioned foreign man-of-war, was thereafter entitled to all belligerent rights and hospitalities within British jurisdiction. Incredible as it now must seem to Englishmen as well as to us, a British ministry, of which Lord Palmerston was the head, then professed itself impotent to vindicate its authority or to assert the majesty, or even

tions and Suggestions, published in 1875, has a refreshing sound. Such curt frankness causes a feeling of respect for the individual man to predominate over any, or all, other sentiments. The passage referred to (p. 407) is as follows:—"I assent entirely to the opinions of the Lord Chief Justice of England [in his award in the Geneva Arbitration] that the '*Alabama*' ought to have been detained during the four days in which I was waiting for the opinion of the Law Officers. But I think that the fault was not that of the Commissioners of the Customs [as asserted by Lord Cockburn]; it was my fault, as Secretary of State for Foreign Affairs."

the dignity, of the law. It had been made the dupe of what Lord Cockburn not inaptly termed "contrivances,"—"the artifices and tricks, to which the unscrupulous cunning of the Confederate agents did not hesitate to resort in violation of British neutrality" *—and yet the poor victim of these "artifices and tricks" professed itself utterly unable to make itself respected, much less to vindicate its authority. At a later day Earl Russell recovered the use of his faculties and his command of language. He then, though the law had not in the mean time been changed, found means to let the Confederate agents understand that "such shifts and stratagems" were "totally unjustifiable and manifestly offensive to the British Crown."

Such are the simple facts in the case. And now, looking back through the perspective of forty years and speaking with all moderation, is it unfair to ask—Was any great nation ever guilty of a more wanton, a more obtuse, or a more criminal dereliction? The world's great ocean-carrier permitted a belligerent of its own creation to sail a commerce-destroyer through its statutes; and then, because of an empty transfer, set up a brazen pretence that in affording protection and hospitality to the vessel thus existing through an evasion of its own law, Great Britain did not stand an accomplice in piracy. "Shall the blessed son of heaven prove a micher and eat black-berries?—a question not to be asked. Shall the son of England prove a thief, and take purses?—a question to be asked."

It is not necessary further to follow the law of

* Papers Relating to the Treaty of Washington (Ed. 1872), vol. iv, p. 377.

Great Britain as then laid down, or to enumerate the precedents created under it. One thing led to another. In the Autumn of 1861 Captain Bulloch ran the blockade, and, visiting Richmond, conferred with his chief, the Secretary of the Confederate Navy. He then learned that the designs of the Richmond government as respects naval operations from a British base had "assumed a broader range." * Secretary Mallory now contemplated the construction in Great Britain of "the best type of armored vessels for operations on the coast * * * to open and protect the blockaded ports. * * * It was impossible to build them in the Confederate States — neither the materials nor the machines were there; and besides, even if iron and skilled artisans had been within reach, there was not a mill in the country to roll the plates, nor furnaces and machinery to forge them, nor shops to make the engines." † This was a distinct step in advance. Earl Russell had declared that one great object of the British government was to preserve "for the nation the legitimate and lucrative trade of ship-building"; and if it was "legitimate" to construct a single commerce-destroyer to take part in hostilities then going on, why was it not legitimate to construct a squadron of turreted iron-clads? It certainly was more "lucrative." In the words of Mr. Gladstone, then Chancellor of the Exchequer, the Confederate leaders, having made an army, "are making, it appears, a navy"; and the "lucrative trade" of constructing that navy naturally fell to the ship-wrights of the Mersey. The Prime Minister of Great Britain now, also, boldly took

* Bulloch, vol. i, p. 277.

† *Ibid.*, p. 380.

the ground in Parliamentary debate—speaking, of course, for the Government—that of this no belligerent had any cause to complain. “As a mercantile transaction” British merchants and manufacturers were at liberty to supply, and had a right to supply, one or both of “the belligerents, not only with arms and cannon, but also with ships destined for warlike purposes.” To the same effect the Secretary for Foreign Affairs informed the United States minister that, except on the ground of any proved violation of the Foreign Enlistment Act * * * Her Majesty’s Government cannot interfere with commercial dealings between British subjects and the so-styled Confederate States, whether the object of those dealings be money, or contraband goods, or even ships adapted for warlike purposes.” “The cabinet,” he moreover on another occasion stated, “were of opinion that the law [thus set forth] was sufficient, but that legal evidence could not always be procured.” Of the sufficiency of that evidence, the government, acting through its legal advisers, was the sole judge. As such, it demanded legal proof of a character sufficient not only to justify an indictment, but to furnish reasonable grounds for securing a conviction thereon. The imputation and strong circumstances which lead directly to the door of proof, gave, in this case, no satisfaction. Facts of unquestioned notoriety could not be adduced. Notoriety was not evidence.* A petty jury in an English criminal court became thus the final arbiter of Britain’s international obligations. If that august tribunal

* Papers Relating to the Treaty of Washington, vol. iv, pp. 377, 479.

pronounced a case not proven, though the real facts were common town talk, the law was not violated, and, whatever acts of maritime wrong and ocean outrage followed, foreign nations had no grounds for reclamation. And this was gravely pronounced law; "Ay, marry; crowner's quest law!"

Here, indeed, was the inherent, fundamental defect of the British position,—what afterwards came to being described as the "insularity" of the British contentions. One and all,—politicians, publicists, jurists, statesmen,—they seemed unable to rise above the conception of a municipal rule of conduct. Their vision was bounded, on the one side by a jury box, and on the other by the benches of the House of Commons. The international obligations of Great Britain, Earl Russell did not cease to contend, were coterminous with the municipal laws of Great Britain; and if those laws did not provide adequate protection for the rights and properties of foreign nations it was most unreasonable for the representatives of those nations to present claims and complaints to Her Majesty's government. Great Britain was only accountable in so far as her own laws made her accountable. It is almost unnecessary to say that this rule also is one which in its converse operation might not infrequently lead to inopportune results.

The Foreign Enlistment Act of 1819 was then passed in review. It was pronounced "effectual for all reasonable purposes, and to the full extent to which international law and comity can require." In the opinion of the government, there was no occasion for its amendment or strengthening. No

move was made to that end ; no recommendation submitted to Parliament. On the contrary, when in March, 1863, the neutrality laws were in debate, Lord Palmerston did not hesitate to declare from the ministerial benches, if the cry that those laws were manifestly defective was raised "for the purpose of driving Her Majesty's government to do something which may be derogatory to the dignity of the country, in the way of altering our laws for the purpose of pleasing another Government, then all I can say is that such a course is not likely to accomplish its purpose * * * but the people and Government of the United States must not imagine that any cry which may be raised will induce us to come down to this House with a proposal to alter the law." Thus another door of future possible escape was on this occasion closed by the British Premier, so to speak, with a slam. The law, however manifestly defective, was not to be changed to please anyone.

Meanwhile, as if to make the record at all points complete, and to show how very defective this immutable law was, the Courts passed upon the much-discussed Foreign Enlistment Act of 1819. Under the pressure brought to bear by the United States minister a test case had been arranged. It was tried before a jury in the Court of Exchequer on the 22nd of June, 1863, the Laird iron-clads being then still on the ways, but in an advanced stage of construction. The vessel thus seized and proceeded against in order to obtain a construction of the Act was the *Alexandra*. This vessel was being built with a view to warlike equipment. Of that, no denial was possible. That she was intended for

use in the Confederate service was a moral certainty. The *Alabama* was at that time in its full career of destruction,—burning, sinking, destroying. Before her ravages, the merchant marine of the United States was fast disappearing,—the ships composing it either going up in smoke, or being transferred to other flags. With all these facts admitted or of common knowledge, the Lord Chief Baron presiding at the *Alexandra* trial proceeded to instruct the jury on the law. The Foreign Enlistment Act was, he told them, not designed for the protection of belligerent powers, or to prevent Great Britain being made the base of naval operations directed against nations with which that country was at peace. The purpose of the statute was solely to prevent hostile naval encounters within British waters ; and, to that end, it forbade such equipment of the completed ship as would make possible immediate hostile operations, it might be “before they left the port.” Such things had happened ; “and that has been the occasion of this statute.” He closed with these words—“if you think the object was to build a ship in obedience to an order, and in compliance with a contract, leaving those who bought it to make what use they thought fit of it, then it appears to me the Foreign Enlistment Act has not been in any degree broken.”

The jury, of course, under such an interpretation of the statute, rendered a verdict for the defendants, and that verdict the audience in the court-room received with an outburst of applause. This outburst of applause was significant ; more significant than even the charge of the Judge. Expressive of the feelings of the British people, it pointed directly to

the root of the trouble. The trial took place towards the close of June, 1863,—a few days only before Gettysburg; and, at that time, England, so far as the United States was concerned, had reached a state of mind Elizabethan rather than Victorian. The buccaneering blood,—the blood of Drake, of Cavendish, and of Frobisher,—was stirring in British veins. The *Alabama* then stood high in public admiration,—a British built ship, manned by a British crew, armed with British guns, it was successfully eluding the “Yankee” ships of war, and destroying a rival commercial marine. Wherever the British jurisdiction extended the *Alabama* was a welcome sojourner from the weary sea. The company on the decks of British mail steamers cheered her to the echo as they passed. At that time, so strong among the influential classes of Great Britain was the feeling of sympathy for the South, and so intense was the enmity to the Union, mixed with a contempt as outspoken as it was ill-advised, that those sentiments were well-nigh all-pervasive. Speaking shortly after Richard Cobden said—“I declare to you that, looking at what is called in a cant phrase in London, ‘society’; looking at society—and society, I must tell you, means the upper ten thousand, with whom Members of Parliament are liable to come in contact at the clubs and elsewhere in London; looking at what is called ‘society’—looking at the ruling class, if we may use the phrase, that meet in the purlieus of London, nineteen-twentieths of them were firmly convinced from the first that the civil war in America could only end in separation.” Captain Bulloch asserted twenty years later that, being thrown while in Eng-

land a good deal among Army and Navy men "I never met one of either service who did not warmly sympathize with the South"; * and he further expressed his belief that this was the feeling of "at least five out of every seven in the middle and upper classes." † To the like effect, Mr. G. W. P. Bentinck,—a member of Parliament,—declared in a speech at Kings Lynn in October, 1862, that, as far as his experience went, "throughout the length and breadth of the land, wherever I have travelled, I never yet have met the man who has not at once said—'My wishes are with the Southerners'"; and he went on to add that this feeling was mainly due to the fact that the Southerner was "fighting against one of the most grinding, one of the most galling, one of the most irritating attempts to establish tyrannical government that ever disgraced the history of the world." Mr. Gladstone's unfortunate utterance at about the same time passed into history; from which it failed not afterwards to return sorely to plague him. "We may anticipate with certainty the success of the Southern States so far as regards their separation from the North. * * * That event is as certain as any event yet future and contingent can be;" and again, ten months later, he said in Parliament,—“We do not believe that the restoration of the American Union by force is attainable. I believe that the public opinion of this country is unanimous upon that subject. * * * I do not think there is any real or serious ground for doubt as to the issue of this contest.” Four months previous, Mr. Gladstone's associate in the cabinet, Earl Russell, had lent emphasis to this opinion by de-

* Bulloch, vol. ii, p. 308.

† *Ibid.*, i, 294.

claring in the House of Lords—"There may be one end of the war that would prove a calamity to the United States and to the world, and especially calamitous to the negro race in those countries, and that would be the subjugation of the South by the North." With this idea that there could be but one outcome of the struggle firmly established in their minds, influential members of the Cabinet did not urge recognition simply because, in view of the certainty of the result, they deemed such action unnecessary and impolitic.* The whole British policy during the Civil War was shaped with a view to this future state of affairs, and the creation of bad precedents was ignored accordingly. The Union was to be divided into two republics, unfriendly to each other. There was to be one democratic, free-labor republic, or more probably two such, lying between the British possessions on the North, and a slave-labor, cotton-growing republic on the South; the latter, almost of necessity, acting in close harmony of interest, commercial and political, with Great Britain. For Great Britain eternity itself had thus no day of reckoning.

Relying on this simple faith in a certain future,—this absolute confidence that the expected only could occur,—utterances like the following appeared in the editorial columns of the *Morning Post*, the London journal understood most closely to reflect the opinions of the Prime Minister. "From the ruling of the judge [in the case of the *Alexandra*] it appeared that the Confederate Government might with ease obtain as many vessels in this country as they pleased without in any manner violating our laws.

* Bulloch, vol. ii, p. 5.

It may be a great hardship to the Federals that their opponents should be enabled to create a navy in foreign ports, but, like many other hardships entailed on belligerents, it must be submitted to ; " * while, five months before this same organ of " society " and the " influential classes " had reached the comfortable conclusion that, so far as the *Alabama* was concerned, the fact " she sails upon the ocean is one of those chances of war to which the Government of the United States ought with dignity and resignation to submit."

II

Fortunately for maritime law, fortunately for itself, the British Government paused at this point. The " Laird rams," as they were now known, presented a test case. London " society " and the irresponsible press of Great Britain might, like the audience in the Court of Exchequer, applaud the charge of the Lord Chief Baron, and gladly accept the law he laid down that it was legal for a belligerent to create a navy in a neutral port. This was actually being done. Theretofore the cases had been those of individual commerce-destroyers only. Now, an armament was in course of construction in a British port intended for a naval operation of magnitude against a foreign belligerent with which Great Britain was at peace. The vessels, moreover, were equipped with weapons of offensive warfare—their beaks. Their purpose and destination could not be proven in any legal proceedings ; but, known of all men, they were hardly

* *Morning Post*, March 14, August 10, 1863.


concealed by fraudulent bills of sale. The law as laid down by the Lord Chief Baron in the case of the *Alexandra* might, therefore, as "crown's quest law" be of the very first class; but, for Her Majesty's government such a construction of the law,—an act in the Statute-book of Great Britain,—obviously involved serious consequences. Were they prepared to go to the journey's end on the road thus pointed out? To what might it lead? To what might it not lead?

Into the causes of the change of policy which now took place it is not necessary here to enter. The law was expounded in the *Alexandra* case on the 22nd of June, 1863; Vicksburg surrendered, and the battle of Gettysburg was fought, on the 3rd and 4th of the following July; three months later, on the 9th of October, the detention of the Laird iron-clads was ordered. After the rulings of the court in the *Alexandra* case, there can be no question that the law was "strained" to effect this seizure.* There can be equally little question that the detention of the iron-clads was a surprise to the American minister then representing the country in London. It marked also a radical change in the policy pursued by the Palmerston-Russell ministry. Earl Russell apparently now first realized the fact he afterwards announced in Parliament, "that in this conflict the Confederate States have no ports, except those of the Mersey and the Clyde, from which to fit out ships to cruise against

* The seizure was severely criticised in the House of Commons; and, on a division—nominally for papers, but really amounting to a vote of censure—Earl Russell's conduct in stopping the Laird rams was approved by a comparatively small majority. *Speech of Attorney-General in House of Commons, August 1, 1870.*

the Federals” ; and it seems to have dawned upon him that, in the case of future hostilities, other nations besides Great Britain had ports, and, in certain not impossible contingencies, those ports might become bases,—perhaps inconvenient bases,—of maritime warfare, as were now those of the Mersey and the Clyde. It was a thing much to be deplored that rules did work both ways, and that curses, like chickens, would come home to roost ; but, this being so, it behooved prudent statesmen to give a certain degree of consideration to the precedents they were creating.

Whether Earl Russell reasoned in this wise or not, certain it is that after September, 1863, Great Britain ceased to be available as a base of Confederate naval operations. The moment it felt so disposed, Her Majesty’s Government found means to cause the neutrality of Great Britain to be respected ; and, in spite of the rulings of the courts, the Foreign Enlistment Act proved something more than a “purely nominal” obstacle in the way of a belligerent in search of a base of maritime warfare. My own belief, derived from a tolerably thorough study of the period, is that numerous causes contributed to bringing that change about. Among the more potent of these I should enumerate the stirring of the British conscience which followed the Emancipation Proclamation of September, 1862 ; the conviction, already referred to, that any decisive action on the part of Great Britain was unnecessary as well as impolitic, the ultimate success of the Confederacy being a foregone conclusion ; the troubled state of affairs on the continent as respects both Poland and Denmark ; and, above all, the honest anger of Earl



Russell at the consequences which had ensued from the evasion of the *Alabama*. The precedent he had himself helped to create startled him,—he recoiled in presence of its logical consequences ; and, in view of the complications then existing on the continent, or there in obvious process of development, the great financial and commercial interests of Great Britain showed signs of awakening. Ominous queries were shortly propounded ; and, on the evening of the 13th of May, 1864, the head of the great house of Barings fairly startled the country by rising in the House of Commons, and suggesting certain queries to the government,—queries, now, thirty-seven years later, of much significance in connection with events in South Africa ;—“ I am,” Mr. Baring said, “ desirous of inviting the attention of the House to the situation in which this country will be if the precedents now established are acted upon in the event of our being involved in war, while other States are neutral. Under the present construction of our municipal law there is no necessity that a belligerent should have a port, or even a seashore. Provided she has money, or that money is supplied to her by a neutral, she may fit out vessels, and those vessels need not go to the country to which they are said to belong, but may go about the seas dealing destruction to British shipping and property. Take the case, which I hope we shall avoid, of our being at war with Germany. There would, as things now stand, be nothing to prevent the Diet of Frankfort from having a fleet. A number of the small States of Germany might unite together, and become a great naval power. Money is all that is required for the pur-

pose, and Saxony, without a seashore, might have a First Lord of the Admiralty, without any docks, who might have a large fleet at his disposal. The only answer we could make under those circumstances to France and the United States, who as neutrals might fit out vessels against us on the pretence that they were German cruisers, was that we would go to war with them ; so that by the course of policy which we are pursuing we render ourselves liable to the alternative of having our property completely destroyed, or entering into a contest with every neutral Power in the world. We ought, under these circumstances, to ask ourselves what we have at stake. I will not trouble the House with statistics on the point, but we all know that our commerce is to be found extending itself to every sea, that our vessels float in the waters of every clime, that even with our cruisers afloat it would not be easy to pick up an *Alabama*, and that the destruction of our property might go on despite all our powers and resources. What would be the result? That we must submit to the destruction of our property, or that our shipping interests must withdraw their ships from the ocean. That is a danger, the apprehension of which is not confined to myself, but is shared by many who are far better able to form a judgment than I am. Recollect that your shipping is nearly twice at large as that of the United States. If you follow the principle you are now adopting as regards the United States, you must be prepared to stand the consequences. So strongly was this felt by ship-owners that memorials have already been addressed to the government upon the subject. * * * Last night the hon.

Member for Liverpool presented a petition, signed by almost all the great ship-owners of that place, enforcing the same view and expressing the same anxiety. I am a little surprised at this manifestation, because what is happening around us is a source of great profit to our ship-owners; but it is a proof that they are sensible that the future danger will far preponderate over the present benefit and advantages."

When too late, it thus dawned even on the ship-builders of the Mersey that, for a great commercial people, confederacy with corsairs might be a dangerous, even if not, in their eyes, a discreditable vocation. Firms openly dealing in burglars' tools are not regarded as reputable.

But one way of escape from their own precedents might yet remain. It had always been the contention of Mr. Charles Sumner that a neutral-built ship-of-war could not be commissioned by a belligerent on the high seas. It was and remained a pirate,—the common enemy of mankind,—until its arrival at a port of the belligerent to which it belonged, where alone it could be fitted out and commissioned as a ship-of-war.* As any port will do in a storm, and drowning men proverbially clutch at straws, it is possible to imagine a British ship-owner, as he foresaw in vision the Transvaal and the Orange Free State involved in a war with Great Britain, appropriating this contention, and trying to incorporate it into the International Code. He would then have proceeded to argue somewhat as follows:—"Mr. Baring was a banker, not a publicist. As a publicist he was wrong. A non-maritime nation cannot be a maritime belligerent," &c.,

* Works, vii, 358; Pierce's *Sumner*, vol. iv, p. 394.

&c. But, during the course of our Civil War, the British authorities, legal and political, seemed to take pleasure in shutting against themselves every possible outlet of future escape. So, in this case, referring to the contention of Mr. Sumner, the Attorney-General, speaking after Mr. Baring, expressed himself as follows:—"To say that a country whose ports are blockaded is not at liberty to avail herself of all the resources which may be at her command in other parts of the world, that she cannot buy ships in neutral territory and commission them as ships of war without bringing them to her own country first, is a doctrine which is quite preposterous, and all the arguments founded upon such a doctrine only tend to throw dust into men's eyes and to mislead them."

The morning following this significant debate the tone of Lord Palmerston's London organ underwent a significant change. Grant and Lee were that day confronting each other in the Wilderness, resting for a brief space after the fearful wrestle of Spotsylvania; in London, the conference over the Schleswig-Holstein struggle was in session, and the feelings of Great Britain were deeply enlisted on behalf of Denmark, borne down by the united weight of Prussia and Austria. So, in view of immediate possible hostilities, the *Post* now exclaimed—"We are essentially a maritime power, and are bound by every motive of self-interest to watch with jealousy the observance of neutral maritime obligations. We may be at war [South Africa!] ourselves; we have a future to which to look forward, and we must keep in mind the precept which inculcates the necessity of doing to others as we

would be done by. * * * War is no longer considered by the commercial classes an impossibility; and the ship-owners of Liverpool are considering what is to become of their property should we unhappily become involved in war, and innumerable *Alabamas* issue from neutral [American!] ports to prey upon British commerce throughout the world. Suppose that circumstances obliged us to espouse the cause of Denmark against her ruthless enemies, would not the German States hasten to follow the bad example set them by the Confederates, and at which the inefficiency of our law obliges us to connive?" And the London organ of "society" and the "influential classes" then added this sentence which, under certain conditions actually existing thirty-five years later would have been of very pregnant significance—"Some petty principality which boasts of a standing army of five hundred men, but not of a single foot of sea-coast [e.g. the Transvaal, the Orange Free State] might fit out cruisers in neutral [e.g. American] ports to burn, sink and destroy the commerce of Great Britain; and the enormous amount of damage which may be done in a very short time, even by a single vessel, we know from the history of the *Alabama*." *

Thus when the war of the Rebellion closed the Trans-Atlantic outlook was, for Great Britain, ominous in the extreme. Just that had come about which English public men and British newspapers had wearied themselves with asseverating could not possibly happen. The *Times* and *Morning Post* especially had loaded the record with predictions, every one of which the event falsified; and,

* The *Post*, May 14 and 18, 1864.

in doing so, they had gone out of their way to generate bitter ill-feeling by the arrogant expression of a contemptuous dislike peculiarly British and offensive. For example, the *Times*, "well aware that its articles weigh in America more heavily than despatches" first referred to us as "this insensate and degenerate people," and then proceeded to denounce "this hateful and atrocious war * * * this horrible war," which it declared was of such a character that its defenders could not find in all Europe a single society where they could make themselves heard.* In the same common temper, the *Standard*, reviewing the results of the conflict on the very day that Vicksburg, unknown to it, had surrendered, declared—"We have learned to dislike and almost to despise the North; to sympathize with, and cordially to admire, the South. We have learnt that the South is, on the whole, in the right; that the North is altogether, wilfully and wickedly in the wrong." But these expressions of comfortable contempt were not confined to the London press. Liverpool, for instance, was conspicuous as a hot-bed of Confederate sympathy; and, as early as August, 1861, the leading journal of that city expressed itself as follows—"We have no doubt whatever that the vast majority of the people of this country, certainly of the people of Liverpool, are in favor of the cause espoused by the Secessionists. The defeat of the Federalists gives unmixed pleasure; the success of the Confederates is ardently hoped, nay, confidently predicted." A year later, the *London Post* referred in the same tone to those whom it

* July 9, 12, 1862.

saw fit, in its own great wisdom, to describe as "the infatuated people across the Atlantic"—"The whole history of the war is a history of mistakes on the Federal side. Blinded by self-conceit, influenced by passion, reckless of the lessons of history, and deaf of warnings which every one else could hear and tremble at, the people of the North plunged into hostilities with their fellow-citizens without so much as a definite idea what they were fighting for, or on what condition they would cease fighting. They went to war without a cause, they have fought without a plan, and they are prosecuting it still without a principle." It would then pleasantly refer to the "suicidal frenzy" of a contest in which two sections were striving "with a ferocity unknown since the times when Indian scalped Indian on the same continent"; and sorrowfully added—"American pride contemptuously disdains to consider what may be thought of its proceedings by the intelligent in this country; inflated self-sufficiency scorns alike the friendly advice of the disinterested and the indignant censures of a disapproving world." And then, finally, when its every prevision had proved wrong and all its predictions were falsified, as it contemplated the total collapse of the Confederacy, this organ of "society" and the "influential classes" innocently observed—"The antipathy entertained by the United States toward England has, owing to circumstances entirely beyond our control, and into which it is unnecessary now to enter, been fanned into a fiercer flame during the progress of the war;" and it now referred to Great Britain as "the mother country." *

* May 15, 1865.

Recorded utterances of this character could be multiplied indefinitely ; I take these few, selected at random, merely to illustrate the extreme difficulty of the position into which the precedents and declarations she herself had established and put freely on record brought Great Britain at the close of our Civil War. It is useless to say that, as between nations, irresponsible utterances through the press and from the platform are not entitled to consideration, and should not be recalled. They, none the less, are a fact ; and they are not forgotten. On the contrary, they rankle. They did so in 1865.

Happily, however, for the peace of the world, a few great facts then stood forth, established, and of record ; and it is these prominent facts which influence popular feeling. English built ships,—English-manned and English-armed,—had swept the American merchant marine from the seas ; but, most fortunately, an American man-of-war of not unequal size had, within sight of English shores, sent to the bottom of the British channel the single one of those commerce-destroyers which had trusted itself within reach of our guns. In this there was much balm. Again, America was weary of strife, and longed for rest ; and it could well afford to bide its time in view of the changed tone and apprehensive glances which now came across the Atlantic from those whose forecast had deceived them into a position so obviously false. In common parlance, Great Britain had made her bed ; she might now safely be left to a prolonged nightmare as she lay in it. The United States,—no longer an “insensate and degenerate people”—could well afford to wait. Its time was sure to come.

Great Britain, also, was most uncomfortably of this same opinion. The more her public men reflected on the positions taken by the Palmerston-Russell ministry, and the precedents therein created, the worse they seemed, and the less propitious the outlook. The reckoning was long ; and it was chalked plainly on the wall. It was never lost to sight or out of mind. The tendency of events was obvious. They all pointed to retaliation in kind ; for, in the Summer of 1866 the House of Representatives at Washington passed, without one dissenting vote, a bill to repeal the inhibitions on the American neutrality laws against the fitting out of ships for belligerents. The threat was overt ; Great Britain deprecatingly met it by the passage, in 1870, of a new and stringent Foreign Enlistment Act.

Just six years elapsed between the close of the War of the Rebellion (May, 1864) and the signing of the Treaty of Washington (May, 1871). For Great Britain those were years of rapid education toward a new code of international law. Considering the interval traversed, the time of traversing it cannot be said to have been long. When, in the midst of the Civil War, tidings of the depredations of the British-built Confederate commerce-destroyers reached America, instructions were sent to the Minister of the United States in London to demand reparation. To this demand Earl Russell, then Foreign Secretary, in due time responded. Not only did he deny any liability, legal or moral, but he concluded his reply with this highly significant, not to say petulant, remark,—“ I have only, in conclusion, to express my hope that you may not be instructed again to put forward claims which Her

Majesty's government cannot admit to be founded on any grounds of law and justice." *

The discussion seemed closed; Great Britain had apparently taken her stand. In the words of the Foreign Secretary—"Her Majesty's government entirely disclaim all responsibility for any acts of the *Alabama*." This was in March, 1863. On the 19th of June, 1864, the depredations of the *Alabama* were brought to a summary close. When the Confederate Secretary of War, at Richmond, heard of the loss thus sustained, he wrote immediately (July 18th) to the Liverpool bureau of his department—"You must supply her place if possible, a measure [now] of paramount importance." † This despatch reached its destination on the 30th of August, and on the 20th of October the head of the bureau had "the great satisfaction of reporting the safe departure on the 8th inst." of the *Shenandoah*, from London, and its consort, the *Laurel*, from Liverpool, "within a few hours of each other"; and this in spite of "embarrassing and annoying inquiries from the Customs and Board of Trade officials." The *Shenandoah* now took up the work of destruction which the *Alabama* was no longer in position to continue. It thus devolved on the American minister to present further demands on the Foreign Secretary. But the situation was now materially changed. Earl Russell had abruptly closed the correspondence over the depredations of the *Alabama* seven weeks before the unfortunate battle of Chancellorsville; Lee surrendered at Appomattox just two days after Mr. Adams brought to the notice of the Foreign Secre-

* Dip. Cor., 1863, 380.

† Bulloch, vol. ii, p. 112.

tary the depredations of the *Shenandoah*. A long correspondence ensued, which was closed on the 2d of the following December by Lord Clarendon, Earl Russell's successor as Foreign Secretary. His despatch was brief; but in it he observed "that no armed vessel departed during the war from a British port to cruise against the commerce of the United States"; and he further maintained that throughout the war "the British government have steadily and honestly discharged all the duties incumbent on them as a neutral power, and have never deviated from the obligations imposed on them by international law." And yet in this correspondence the first step in the direction of a settlement was taken,—a step curiously characteristic of Earl Russell. As indicative also of the amount of progress yet made on the long road to be traversed, it was the reverse of encouraging. Earl Russell had got Great Britain into a position from which she had in some way to be extricated. The events of April and May, 1865, in America were very significant when viewed in their bearing on the fast rising European complications incident to the blood-and-iron policy to which Count Bismarck was deliberately giving shape. Dark clouds, ominous of coming storm, were hanging on the European horizon; while America, powerful and at peace, lowered angrily British-ward from across the Atlantic. It was a continuous, ever-present menace, to be averted only when approached in a large way. One course, and but one course, was now open to the British statesman. To see and follow it called for an eye and mind and pen very different, and far more quick and facile, than the eye, mind and pen

with which nature had seen fit to endow the younger scion of the ducal house of Bedford.

Had he been equal to the situation, it was then in the power of Earl Russell to extricate Great Britain from the position into which he had brought her, and out of the nettle, danger, to pluck the flower, safety. Nor would it have been difficult so to do, and that without the abandonment of any position he had taken. Satiated with battle and satisfied with success, America was then in complaisant mood. A complete victor is always inclined to be magnanimous, and that was a time when, as Mr. Sumner afterwards expressed it, "we would have accepted very little." * Taking advantage of this national mental mood, it would have been possible for Earl Russell then, while extricating Great Britain from a false position, to have at once obliterated the recollection of the past and forestalled the Treaty of Washington, securing at the same time the adoption at little cost of a new principle of international law obviously in the interest of Great Britain. Still insisting in his correspondence with the American minister that Her Majesty's government had, in the language of his successor, "steadily and honestly discharged all the duties incumbent on them as a neutral power," and hence had incurred no liability under any recognized principle or precedent of international law for depredations committed by Her Majesty's subjects beyond her jurisdiction,—adhering firmly to this contention, he might have gone on to recognize in the light of a record which he had already admitted was a "scandal" and "a reproach to our laws," that a radical

* Pierce's *Sumner*, vol. iv, p. 384.

change in the international code was obviously desirable, and that the time for it had come. The neutral should be responsible for results whenever, after due notice of a contemplated infraction was given (as in the cases of the *Florida* and *Alabama*), she permitted her territory to be made by one belligerent the base of operations against another. The laws ought, he would have admitted, to be adequate to such an emergency ; and they should be enforced. He might well then have expressed the honest regret Great Britain felt that her laws had during our Rebellion proved inadequate, and a proper sense of the grievous injury the United States had in consequence sustained. The rest of the way out would then have been plain to him. In view of Great Britain's commercial and maritime interests, she could well afford to incur large pecuniary sacrifices to secure the future protection involved in the change of international law contended for by the American government. She could not ask that protection for the future with no regard to the past. That Great Britain had incurred to a certain extent a moral obligation through the insufficiency of her statutes, combined with the unsatisfactory state of international law, could not be denied in view of the admission already made that the cases of the Confederate commerce-destroyers were a "scandal" and a "reproach." Under these circumstances Great Britain was prepared to assent to the modifications of international law now contended for by the United States ; and, to secure the manifest future advantage involved in their adoption, would agree, subject to reasonable limitations as to extent of liability, &c., to have those principles op-

erate retrospectively in the case of such Confederate commerce-destroyers as had, after notice given, sailed from British ports of origin during the Civil War.

In the light of what afterwards occurred, including the Treaty of Washington and the results of the Geneva Arbitration, it is not difficult to imagine the astonishment with which the American Minister would have read a despatch couched in these terms, and the gratification with which the American people would have hailed it. It would have been, in the reverse, a repetition of the *Trent* experience. The clouds would all have rolled away. While the national pride of Great Britain would have suffered no hurt, that of the United States would have been immensely flattered. The one country would have got itself gracefully, and cheaply, out of an impossible position. It would have secured an advantage of inestimable future value at a cost in reality nominal, and a cost which it afterwards had to pay; the other party would have achieved a great diplomatic victory, crowning and happily rounding out its military successes. Most unfortunately, as the result showed, Earl Russell did not have it in him thus to rise to the occasion. On the contrary, with that curious, conventional conservatism which seems innate in a certain class of English public men,—an inability to recognize their own interests if presented in unaccustomed form,—the British Foreign Secretary now declined to consider those very changes in the law which Parliament five years later voluntarily adopted, and which, seven years later, Great Britain agreed to incorporate in a solemn treaty. The proposed liability for the abuse o

neutrality by belligerents, so invaluable to England, Lord Russell now characterized as "most burdensome, and, indeed, most dangerous"; while, with a simplicity almost humorous, he ejaculated, "surely we are not bound to go on making new laws, *ad infinitum*, because new occasions arise." *

So, high-toned Englishman as he was, Lord Russell, guided by his instincts and traditions, as Prime Minister characteristically went on to make perceptibly worse what, as Foreign Secretary, he had already made quite sufficiently bad. He did not aggrandize, he distinctly belittled, his case. In reply to the renewed demands of the American Minister, he suggested, in a most casual way, the appointment of a joint commission, to which should be referred "all claims arising during the late civil war [his note was dated August 30th, nearly four months after the capture of Jefferson Davis] which the two powers shall agree to refer." The correspondence was at once published in the *Gazette*; and, so general was the proposition of reference, that the *Times*, in commenting editorially on it the morning after publication, admitted the desirability of a settlement, and construed the proposal of a commission as designed to embrace all the American claims. The "Thunderer's" utterance on this point might be inspired,—a feeler of public opinion. A possible way out seemed to open. Earl Russell characteristically lost no time in closing it. At a later day, after the *Alabama* claims had been arbitrated and paid, his Lordship asserted that he had always been willing to have them assumed, or, as he expressed it, would "at once have agreed to arbi-

* The official correspondence in respect to the *Alabama*, p. 145.

tration," could he have received assurances on certain controverted issues, involving, as he considered, the honor and dignity of Great Britain.* This was clearly an after-thought, reached in the light of subsequent events. No suggestion of the sort was ever made by him to Mr. Adams; and when, in August, 1865, such a possible construction was put upon his despatches, he made haste to repudiate it. In fact, Earl Russell, still Foreign Secretary but soon to become Premier, was not yet ready to take the first step in the educational process marked out for Great Britain. The dose was, indeed, a bitter one; no wonder Lord Russell contemplated it with a wry face.

So the Foreign Secretary in August, 1865, lost no time in firmly closing the door which seemed opening. The day following the editorial implication of the *Times* there appeared in its columns an official correction. The correctness of the implication was denied. As Mr. Adams wrote in his diary, the proposal of a joint commission, thus explained, "really stands as an offer to refer the British claims, and a facile refusal to include ours. Wonderful liberality!"; and, a few days later, he added—"the issue of the present complication now is that Great Britain stands as asking for a commission through which to procure a settlement of claims advanced by herself, at the same time that she refuses at the threshold to permit the introduction of all the material demands we have against her. Thus the British position passes all the time from bad to worse. The original blunder, inspired by the over-eagerness to see us divided, has im-

* *Recollections and Suggestions*, p. 278.

pelled a neutral policy, carried to such extremes of encouragement to one belligerent as seemingly to hazard the security of British commerce, whenever the country shall become involved in a war. The sense of this inspires the powers of Eastern Europe with vastly increased confidence in pursuing their particular objects. It is not difficult to see that whatever views Russia may ultimately have on Constantinople will be much fortified by a consciousness of the diversion which it might make through the neutral ports of the United States against the British commerce of one half of the globe. We lose nothing by the passage of time ; Great Britain does."

This somewhat obvious view of the situation evidently suggested itself to the mind of Earl Russell's successor in the Foreign Office, for Earl Russell, on the death of Lord Palmerston in the Autumn of 1865, became Prime Minister. So, one day in the following December, Mr. Adams was summoned to an official interview with the new Secretary. The conversation at this interview, after the matters immediately in hand were disposed of, passed to the general and well-worn subject of the neutrality observed by Great Britain during the struggle which, seven months before, had come to its close. Lord Clarendon, Mr. Adams wrote, insisted that the neutrality "had been perfectly kept ; and I signifying my conviction that a similar observation of it, as between two countries so closely adjacent as Great Britain and France, would lead to a declaration of war by the injured party in twenty-four hours. Here we might have closed the conference, but his Lordship proceeded to con-

tinue it by remarking that he had it on his mind to make a suggestion. He would do so. He went on to express his long conviction of the expediency of a union of sentiment and policy between two great nations of the same race. He hoped to see them harmonize, after the immediate irritation consequent upon the late struggle should have passed away, more than ever before. There were many things in what was called International Law that are now in a vague and unsatisfactory condition ; it would, therefore, seem very desirable that by some form of joint consultation, more or less extensive, these points could be fixed on something like a permanent basis. He enquired of me whether I thought my government would be at all inclined to entertain the idea. I replied that the object was certainly desirable ; but that, in the precise state in which things had been left, I could give no opinion on the question proposed. All that I could do was to report it ; and that not in any official way. His Lordship talked a little grandly about our overlooking the past, letting bygones be bygones, and considering these questions solely on their abstract importance as settling great principles. He said that two such very great countries could scarcely be expected to stoop to concessions or admissions in regard to one another. Would I reflect upon the whole matter. All this time I was rather a listener than a speaker, and committed myself to nothing but vague professions. The fact stares up that this government is not easy at the way the case has been left by Lord Russell, and desires to get out of it without mortification. My own opinion is rather against any effort to help them out. I ought to

note that yesterday Mr. W. E. Forster called to see me for the purpose of urging precisely the same tentative experiment at Washington. He reasoned with me more frankly, in the same strain, and evidently contemplated a more complete process of rectification of the blunder than Lord Clarendon could hint. I also talked to him with more freedom, in a strain of great indifference about arriving at any result ; the advantage was on our side, and I saw no prospect of its diminishing with time. He ended by asking me to think a little longer about a mode of running the negotiation ; for, if it could be done, he felt sure that enough power could be applied to bring this government to consent to it. I replied that all that could be done now must pass through private channels. The record was made up, and I had no inclination to disturb it."

This call of Mr. Forster at that particular juncture was significant ; for Mr. Forster less than a month before had gone into Earl Russell's ministry, becoming Under Secretary for the Colonies ; and Mr. Forster was well known to be a friend of the United States. Badly compromised by Lord Russell's blundering committals, the government at least appreciated the situation, and was feeling for a way out. The position now taken by the Foreign Secretary and Mr. Forster was clearly suggestive of the subsequent Johnson-Clarendon convention. Nothing, however, immediately resulted. Lord Clarendon had, indeed, at the time of his talk with Mr. Adams, already put his suggestion in shape to be formally submitted to Secretary Seward through the British minister at Washington ; and when, six weeks later, his despatch appeared in the Blue

Book, Mr. Adams wrote: "The object is now evident. It is to blunt the effect of Lord Russell's original blunder, and try to throw the odium of it back by a new offer, which we must decline. The contrivance will scarcely work. It is certainly civil to propose that we should bear all the consequences of their policy, and consent to secure them against any future application of it to themselves."

As showing how very sensitive to the situation in which they had been placed the English now were, Mr. Adams two days later mentioned a long conversation with Mr. Oliphant, a member of Parliament then just back from a visit to America. The Fenian movement was at that time much in evidence through its British dynamite demonstrations, and the Irish in the United States were consequently in a state of chronic excitement. Mr. Oliphant called in regard to it. After some discussion of that matter, the conversation drifted to the policy pursued by the British government toward the United States, of which Mr. Oliphant "evidently had not approved. It should have been either positive intervention, or positive amity. The effort to avoid both had excited nothing but ill-will from both parties in the war. One Southern man whom he had met had gone so far as to declare that he was ready to fight England even on the case of the *Alabama*. I briefly reviewed the course taken, and pointed out the time when the cordiality between the countries could have been fully established. It was not improved; and now I had little hope of restoring it for many years." It was during the ensuing Summer that the lower House of Congress passed by

acclamation the bill already referred to, repealing the inhibitions of our neutrality laws.

A change of ministry now took place in Great Britain. Earl Russell, with the Liberals, went out of office, and Lord Derby, at the head of the Conservatives, came in. Lord Stanley, the oldest son of the new Premier, succeeded Lord Clarendon in the Foreign Office, and again the old straw was threshed over. A distinct step was, however, now marked in advance. The new Prime Minister took occasion to intimate publicly that a proposition for the arrangement of the *Alabama* claims would be favorably entertained; and the *Times*, of course under inspiration, even went so far as to admit that Earl Russell's position on that subject was based on a "somewhat narrow and one-sided view of the question at issue. It was not safe," it now went on to say, "for Great Britain to make neutrals the sole and final judges of their own obligations." This was a distinct enlargement of the "insular" view. It amounted to an abandonment of the contention that a petty jury in an English criminal court was the tribunal of last resort on all questions involving the international obligations of Great Britain.

The interminable diplomatic correspondence now began afresh; and, in the course of it, Secretary Seward rested the case of the United States largely on what both he and Mr. Adams termed "the premature and injurious proclamation of belligerency" issued by the British government in May, 1861. This he pronounced the fruitful source whence all subsequent evil came. Lord Stanley took issue with him on that point. He did not deny a responsibility for the going forth of Confederate commerce-

destroyers from British ports, and a certain liability for the damages by them caused ; but, he contended, the British government could not consent to arbitrate the question whether the Confederacy was prematurely recognized as a belligerent. The recognition of belligerency in any given case was, he contended, a matter necessarily resting in the discretion of a sovereign, neutral power. He intimated, however, a willingness to arbitrate all other questions at issue.

In view of the position always from the commencement taken by the American Secretary of State and his representative in London, this limited arbitration could not be satisfactory. Time and again Secretary and Minister had emphasized the impropriety and unfriendliness of the Queen's Proclamation of May 13th, 1861, and the consequences thereof, so momentous as scarcely to admit of computation. Accordingly, the discussion again halted. In June, 1868, Mr. Reverdy Johnson, of Maryland, succeeded Mr. Adams in London ; and, once more, negotiations were renewed. And now the British government had got so far on the way to its ultimate and inevitable destination, that, a discreet silence being on both sides observed in the matter of the proclamation of May, 1861, a convention was readily agreed to covering all claims of the citizens and subjects of the two countries against the governments of each. While this treaty was in course of negotiation, another change of ministry took place in Great Britain ; and Mr. Gladstone, who had been Chancellor of the Exchequer throughout the Civil War, became Premier, Earl Russell being now finally retired from official life. Lord Claren-

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don was again placed in charge of the Foreign Office. Under these circumstances, the form of convention agreed to by Lord Derby was revised by his successor in such a way as to make it reasonably satisfactory to Secretary Seward, and, on the 14th of January, 1869, it received the signatures of Mr. Johnson and Lord Clarendon. It was known as the Johnson-Clarendon Convention.

In hurrying this very important negotiation to so quick a close both Secretary Seward and Reverdy Johnson were much influenced by a very natural ambition. They greatly desired that a settlement of the momentous issues between the two great English-speaking nations should be effected through their agency. Mr. Seward especially was eager in his wish to carry to a final solution the most difficult of the many intricate complications which dated back to the first weeks of his occupation of the State Department. Accordingly he did not now repeat his somewhat rhetorical arraignment of Great Britain in the correspondence of two years before, because of the proclamation of 1861. It had become simply a question of the settlement of the claims of individual citizens and subjects of one country against the government of another. Lord Stanley's contention on the belligerency issue was tacitly accepted as sound. This, as will presently appear, implied a great deal. It remained to be seen whether that primal offence,—that original sin which

“ Brought death into the world and all our woe,”

could thus lightly and in silence be relegated to the limbo of things unimportant, and so, quite forgotten.

The negotiation had been entered upon in Au-

gust, 1868; the convention was executed in January following. But in the interim a presidential election had taken place in the United States; and, when the treaty reached America, the administration of Andrew Johnson was, in a few weeks only, to be replaced by that of General Grant. Secretary Seward would then cease to be at the head of the Department of State; and, as he now wrote to Reverdy Johnson, "the confused light of an incoming administration was spreading itself over the country, rendering the consideration of political subjects irksome if not inconvenient." Charles Sumner was at that time chairman of the Senate Committee on Foreign Relations, a position he had held through eight years. As chairman of that committee the fate of the treaty rested largely with him. The President-elect, with no very precise policy in his mind to be pursued on the issues involved, wished to have the claims convention go over until his administration was in office; and when, in February, the convention was taken up in the Senate committee, all its members expressed themselves as opposed to its ratification. "We begin to-day," Mr. Sumner then said, referring to the rejection of the proposed settlement as a foregone conclusion, "an international debate, the greatest of our history, and, before it is finished, the greatest of all history." *

* Pierce's *Sumner*, vol. iv, p. 368.

III

It was now that Mr. Fish came upon the scene, as the successor of Secretary Seward in the Department of State. And here, perhaps, it would be proper for me to say that I had no acquaintance of a personal sort with Mr. Fish. Born in New York, in 1808, he died at Garrison-on-the-Hudson in 1893. He was, I am informed, President of this Society for two years,—1867-69,—necessarily resigning the office when he accepted a position in the Cabinet of President Grant. Later his name appears as Vice-President, an office from which he withdrew in 1888 because of advancing years. It so chanced, also that I never but once met Mr. Fish. In the summer of 1890, I think it was, some years preceding his death, I passed a morning with him by appointment at his country home at Garrison, going there to obtain from him, if I could, some information on a subject I was then at work on. Beyond this, I knew him only as a public character, more or less actively engaged in political life through twenty-five exceptionally eventful years.

Held in its Committee of Foreign Affairs, the Johnson-Clarendon convention was not acted upon by the Senate, at the time sitting in executive session, until the 13th of April, 1869. It was then rejected by a practically unanimous vote (54 to 1) following an elaborate speech in condemnation of it by the chairman of the committee having it in charge. That speech was important. It marked a possible parting of the ways. In that speech, and by means of it, Mr. Sumner not only undid, and more than

undid, all that yet had been done looking to an amicable adjustment of the questions at issue between the two nations, but he hedged thick with difficulties any approach to such an adjustment in the future. To appreciate this, the essential feature of the Clarendon-Johnson convention must be borne constantly in mind.

As I have already said, that convention provided only for the settlement of the claims of individuals. The question of liability was to be referred to arbitration. The right of Great Britain to judge for itself as to the time and manner of the recognition of the Confederacy as a belligerent power was not called in question, or submitted to arbitrament. A settlement was thus made possible; indeed, the way to a settlement was opened wide. The concession was also proper; for, viewed historically, and with a calm regard for recognized principles of international law, it must be admitted that the long and strenuously urged contention of Secretary Seward and Mr. Adams over what they described as the "premature and injurious proclamation of belligerency," and the consequences of the precipitancy of Great Britain in the early stages of the Rebellion, was by them carried to an undue length. Unquestionably the British ministry did issue the very important proclamation of May, 1861, with undue haste; and, in so doing, they were unquestionably actuated by a motive they could not declare. The newly accredited American Minister had not then reached London; but he was known to be on his way, and, in fact, saw the just issued proclamation in the *Gazette* the morning of his arrival. The intention of the Government undoubtedly was that

this question should be disposed of,—be an accomplished fact,—in advance of any protests. It had been decided on; discussion was useless. This was neither usual nor courteous; and from it much was naturally inferred: but it by no means followed that the step was taken in an unfriendly spirit, or that it in fact worked any real prejudice to the Union cause. That it was a grievous blow, given with a hostile intent and the source of infinite subsequent trouble and loss to the United States government, Secretary Seward and Mr. Adams always afterwards maintained; and, during the war, very properly maintained. But for it, they asserted and seem even to have persuaded themselves, the Rebellion would have collapsed in its infancy. Because of it, the struggling insurrection grew into a mighty conflict, and was prolonged to at least twice the length of life it otherwise would have attained. And for this, and for the loss of life and treasure in it involved, Great Britain stood morally accountable; or, as Secretary Seward years afterwards saw fit to phrase it, in rhetoric which now impresses one as neither sober nor well considered, it was Her Majesty's proclamation which conferred "upon the insurrection the pregnant baptismal name of Civil War."

There then was, and there now is, nothing on which to base so extreme an assumption. On the contrary, the historical evidence tends indisputably to show that, though designedly precipitate, the proclamation was issued in no unfriendly spirit. On this point, the statement of William E. Forster is conclusive. Mr. Forster, then a newly elected member of Parliament, himself urged the issuance

of the proclamation, and looked upon it as a point gained for the cause of the Union;* and, eight years later, he declared that "from personal recollection and knowledge" he could testify that "the proclamation was not made with unfriendly *animus*" to the United States. On the contrary, he showed it was issued "in accordance with the earnest wishes of himself and other friends of the North." †

Again, there is good ground on which to argue that the premature issuance of the proclamation, however intended, worked most happily in favor of the Union cause. ‡ It is obvious that the proclamation could not in any event have been withheld more than ninety days; for, within that period, the Confederacy had at Manassas incontrovertibly established its position as a belligerent, and the Confederate flag on the high seas, combined with a Union blockade of 3,000 miles of hostile coast, was evidence not easily explained away, of a *de facto* government on land. Under such conditions, it is idle to maintain that the recognition of belligerency did not fairly rest in the discretion of a neutral, the rights of whose people were being daily compromised, while their property was more than merely liable to seizure and confiscation. Moreover, had the recognition been delayed until after the disgrace of Bull Run, it would in all probability have been complete, and have extended to a recognition of nationality as well as of mere *de facto* belligerency. Nor, finally, is there anything in the record, as since more fully developed, which leads to the belief that the struggle would have been shorter

* Reid's *Forster*, vol. i, p. 335.

† *Ibid.*, vol. ii, p. 12.

‡ *Life of C. F. Adams*, American Statesman Series, pp. 171-4.

even by a month, or in any degree less costly as respects either life or treasure, had the Confederacy never been buoyed up by the confident hope of a voluntary foreign recognition, and consequent aid from without. The evidence is indeed all to the opposite effect. As since developed it is fairly conclusive that, almost to the end, and unquestionably down to the close of 1863, while the Confederates, rank and file as well as leaders civil and military, confidently counted on being able through the potency of their cotton control, to compel an even reluctant European recognition, they never for a moment doubted their ability to maintain themselves, and achieve independence without extraneous aid of any kind. Thirty years in preparation, calling into action all the resources of a singularly masterful and impulsive race, numbering millions and occupying a highly defensible territory of enormous area, the Confederate rebellion was never that sickly, accidental foster-child of Great Britain which, in all their diplomatic contentions, Secretary Seward and Senator Sumner tried so hard to make it out,—a mere bantling dandled into premature existence by an incomplete foreign recognition. On the contrary, from start to finish, it was Titanic in proportions and spirit. It presented every feature of war on the largest scale, domestic and foreign. From the outset, neutral interests were involved; foreign opinion was evoked. In face of such conditions and facts as those to go on to the end of the chapter asserting that such a complete and formidable embodiment of all-pervasive warlike energy should through years have been ignored as an existing fact and refused a recognition even as

belligerent, was, historically speaking, the reverse of creditable,—it was puerile. Yet, after this unparalleled struggle had been brought to a close, Secretary Seward had the assurance to assert in a despatch to Mr. Adams written in January, 1867, —“ Before the Queen’s proclamation of neutrality the disturbance in the United States was merely a local insurrection. It wanted the name of war to enable it to be a civil war and to live ” ; and this was merely the persistent iteration of a similar statement likewise made to Mr. Adams shortly prior to the 1862 disasters at Shiloh and before Richmond,—“ If Great Britain should revoke her decree conceding belligerent rights to the insurgents to-day, this civil strife * * * would end to-morrow.” *

The Johnson-Clarendon convention was open to criticism at many points, and its rejection by the Senate was altogether defensible. It did, however, have one merit, it quietly relegated to oblivion the wholly indefensible positions just referred to. In so far it was thoroughly commendable. By so much the discussion approached a common-sense, amicable settlement, on a rational basis. Unfortunately it was upon that very feature of the treaty Mr. Sumner characteristically directed his criticism and brought his rhetoric to bear. In so doing he gave the debate a violent wrench, forcing it back into its former impossible phase ; and, in so far as in him lay, he made impossible any future approach to an adjustment. Recurring in his speech, subsequently published by order of the Senate, to the sentimental grounds of complaint

* Dip. Cor., 1862, p. 43.

because of conjectural injuries resulting from precipitate action based on an assumed unfriendly purpose in the issuance of the proclamation of May 13, 1861, he proceeded to do what his great model Burke had declared himself unwilling to do,—he framed an indictment of a whole people,—an indictment of many counts, some small, others grandiose, all couched in language incontestably Sumneresque. In 1869 he fairly outdid Seward in 1862. Because of the proclamation, and because of that solely, he pronounced Great Britain responsible not only for the losses incurred through the depredations of all British-built Confederate commerce-destroyers, but for all consequent losses and injuries, conjectural and consequential, computable or impossible of computation, including the entire cost of the Civil War during half its length, and an estimate of the value of a large, and increasing, proportion of the world's carrying trade; with interest to date of settlement on the whole. The "war prolongation" claim, as it was called, Mr. Gladstone afterwards estimated as alone amounting to eight thousand million dollars (£1,600,000,000); while Mr. Sumner, from lack of information only, failed to include a trifle of an hundred millions, which the Confederate Secretary of the Navy had, in 1864, put down as the increased expenditure imposed on the United States by the naval operations set on foot by his department alone.* The chairman of the Senate Committee on Foreign Relations did, however, put himself on record deliberately, and not in the heat of debate, as estimating the money liability of Great Britain, because of the

* Bulloch, vol. ii, p. 112.

issuance of the proclamation of May 13, 1861, at twenty-five hundred millions of dollars; and he clinched the matter by declaring that "whatever may be the final settlement of these great accounts, such must be the judgment in any chancery which consults the simple equity of the case." And this proposition the Senate of the United States now by formal vote approved, promulgating it to the world as its own.

No one in the United States was at that time so familiar with the issues between the two countries, or so qualified to speak understandingly of them as Mr. Adams, from his Boston retirement then watching the course of events with a deep and natural interest. On reading Mr. Sumner's speech, and noting the unanimity of the vote by which the Senate had rejected the convention, he wrote,—“The practical effect of this is to raise the scale of our demands of reparation so very high that there is no chance of negotiation left, unless the English have lost all their spirit and character. The position in which it places Mr. Bright and our old friends in the struggle is awkward to the last degree. Mr. Goldwin Smith, who was at the meeting of the [Massachusetts] Historical Society [which chanced that day to be held] spoke of it to me with some feeling. The whole affair is ominous of the change going on in our form of government; for this is a pronunciamiento from the Senate as the treaty-making power. There were intimations made to me in conversation that the end of it all was to be the annexation of Canada by way of full indemnity. Movements were going on in that region to accelerate the result. I suppose that event

is inevitable at some time; but I doubt whether it will come in just that form. Great Britain will not confess a wrong, and sell Canada as the price of a release from punishment. * * * I begin to be apprehensive that the drift of this government under the effect of that speech will be to a misunderstanding; and, not improbably, an ultimate seizure of Canada by way of indemnification." To the same effect the British Minister at Washington, Mr. Thornton, was apprising his government that, in the Senate debate held in executive session, "Mr. Sumner was followed by a few other Senators, all speaking in the same sense. Mr. Chandler, Senator from Michigan, seeming to be most violent against England, indicating his desire that Great Britain should possess no territory on the American Continent."

Gen. Grant was now fairly entered on his first presidential term, and Mr. Fish had, for some five weeks, been Secretary of State. So far as concerned an amicable settlement between Great Britain and the United States the outlook was quite unpropitious; less propitious in fact than at any previous time. The new President was a military man, and, in the language of Mr. Sumner, he was "known to feel intensely on the *Alabama* question." At the close of the war he had expressed himself in a way hostile to Great Britain, not caring whether she "paid 'our little bill' or not; upon the whole he would rather she should not, and that would leave the precedent of her conduct in full force for us to follow, and he wished it understood that we should follow it." During the war, he had been accustomed to regard Great Britain as "an enemy," and the mischief caused by her course he thought

not capable of over-statement; and, in May, 1869, Sumner wrote that the President's views were in close conformity with those set forth in his speech, and that after its delivery Gen. Grant had thanked and congratulated him. Everything, consequently, now seemed to indicate that events must take the course thus marked out for them. Great Britain would have to face the contingencies of the future weighted down by the policy followed by Palmerston and Russell, and confronted by the precedents of the *Florida*, the *Alabama*, and the *Shenandoah*. She had taken her position in 1861-65, defiantly proclaiming that, for her, conditions could never be reversed, the womb of the future contained no day of reckoning,—no South Africa.

Into the details of what now ensued, it is not necessary here to enter. They are matter of history; and as such, sufficiently familiar. I shall pass rapidly over even the Motley imbroglio, coming directly to the difficulty between Mr. Fish and Mr. Sumner,—high officials both, the one Secretary of State, the other chairman of the Senate Committee on Foreign Relations. In regard to this difficulty much has been written; more said. In discussing it, whether by pen or word of mouth, no little temper has been displayed; but, so far as I am aware, its significance in an historical way has never been developed. As I look upon it, it was an essential factor,—almost a necessary preliminary to that readjustment of relations between the United States and Great Britain now so influential a factor in the international relations of four continents.

The divergence between the two was almost immediate. The position of Mr. Fish, as head of the

State Department, was, so far as Mr. Sumner was concerned, one of great and constantly increasing difficulty. The latter had then been seventeen years a member of the Senate, and, during eight of the seventeen, chairman of the Committee on Foreign Relations. Secretary Seward had been Mr. Sumner's senior in the Senate, and afterwards Secretary of State from the commencement of Sumner's chairmanship of his committee. Naturally, therefore, though he had often been bitter in his attacks on the Secretary,—at times, indeed, *more suo*, indulging even in language which knew no limit of moderation,—he regarded him with very different eyes from those through which he cast glances of a somewhat downward kind on Seward's successor in office. In earlier senatorial days, when they sat together in that body during the Pierce administration, Mr. Fish had always evinced much deference to Sumner's scholarly and social attributes, and had treated him with a consideration which the latter not impossibly misconstrued. The evidence is clear and of record that, when unexpectedly called to take charge of the State Department, Mr. Fish was solicitous as to Sumner's feeling towards him, and anxious to assure himself of the latter's co-operation and even guidance. Meanwhile, though wholly unconscious of the fact, Mr. Sumner could not help regarding Mr. Fish as a tyro, and was not disposed to credit him with any very clearly defined ideas of his own. He assumed, as matter of course, that at last the shaping of the foreign policy of the country would by seniority devolve upon him. The appointment of Mr. Motley to succeed Mr. Reverdy Johnson in the English mission undoubtedly con-

firmed him in this opinion. Mr. Motley was his appointee. That the new plenipotentiary regarded himself as such at once became apparent; for, immediately after his confirmation, he prepared a memoir suggestive of the instructions to be given him. The Johnson-Clarendon convention had just been rejected; the course now to be pursued was under advisement; Mr. Sumner's recent speech was still matter of general discussion. The new President was understood to have no very clearly defined ideas on the subject; it was assumed that Mr. Fish was equally susceptible to direction. Mr. Motley, therefore, looked to Mr. Sumner for inspiration. In his memorandum he suggested that it was not advisable at present to attempt any renewal of negotiations. And then he fell back on the proclamation of May, 1861; proceeding to dilate on that wrong committed by Great Britain,—a wrong so deeply felt by the American people! This sense of wrong had now been declared gravely, solemnly, without passion; and the sense of it was not to be expunged by a mere money payment to reimburse a few captures and conflagrations at sea. And here, for the present, he proposed to let the matter rest. A time might come when Great Britain would see her fault, and be disposed to confess it. Reparation of some sort would then naturally follow; but, meanwhile, it was not for the United States to press the matter further.

Distinct indications of a divergence of opinion as to the course to be pursued were at once apparent. The President, acting as yet under the influence of Mr. Sumner, wished Mr. Motley to proceed forthwith to his post; Mr. Fish inclined to delay his go-

ing. Meanwhile the Secretary was at work on the new minister's letter of instructions; and in them he clearly did not draw his inspiration from the Motley memoir.* On the contrary, referring to the fate of the Johnson-Clarendon convention in the Senate, he proceeded to say that, because of this action, the government of the United States did not abandon "the hope of an early, satisfactory and friendly settlement of the questions depending between the two governments." The suspension of negotiations, he added, would, the President hoped, be regarded by Her Majesty's government, as it was by him, "as wholly in the interest, and solely with a view, to an early and friendly settlement." The Secretary then went on to open the way to such a settlement by defining, in terms presently to be referred to, the views of the President on the effect to be ascribed to the Queen's proclamation of May, 1861.

At this point, the reason became apparent why Mr. Fish was in no haste to have the newly appointed minister proceed at once to London. The Secretary was in a dilemma. The rule of action he was about to lay down as that which should have guided the British government in 1861 must control the United States in 1869. That was obvious; but, in 1869, the United States was itself the in-

* Subsequently, in September, 1877, Grant said, when at Edinburgh—"Mr. Motley had to be instructed. The instructions were prepared very carefully, and after Governor Fish and I had gone over them for the last time I wrote an addendum charging him that above all things he should handle the subject of the *Alabama* claims with the greatest delicacy. Mr. Motley, instead of obeying his implicit instructions, deliberately fell in line with Sumner and thus added insult to the previous injury."

terested observer of an insurrection in the neighboring island of Cuba; and, moreover, the new President was not backward in expressing the warm sympathy he felt for the insurgents against Spanish colonial misrule. He wished also to forward their cause. That wish would find natural expression in a recognition of belligerent rights. Gen. Grant was a man of decided mind; he was very persistent; his ways were military; and, as to principles of international law, his knowledge of them can hardly be said to have been so much limited as totally wanting. He inclined strongly to a policy of territorial expansion; but his views were in the direction of the tropics,—the Antilles and Mexico,—rather than towards Canada and the North. As the event, however, showed, once his mind was made up and his feelings enlisted, it was not possible to divert him from his end. In the matter of foreign policy, the course he now had in mind, though neither of the two at first realized the fact, involved of necessity and from the outset a struggle with Mr. Sumner; and, to one who knew the men, appreciating their characteristics and understanding their methods, it was easy to foresee that the struggle would be as bitter as it was prolonged and unrelenting.

As different in their mental attributes as in their physical appearance, while Mr. Sumner was, intellectually, morally and physically, much the finer and more imposing human product, Grant had counterbalancing qualities which made him, in certain fields, the more formidable opponent. With immense will, he was taciturn; Sumner, on the contrary, in no way deficient in will, was a man of many

words,—a rhetorician. In action and among men, Grant's self-control was perfect,—amounting to complete apparent imperturbability. Unassuming, singularly devoid of self-consciousness, in presence of an emergency his blood never seemed to quicken, his face became only the more set, tenacity personified; whereas Sumner,—when morally excited, the rush of his words, his deep tremulous utterance and the light in his eye, did not impart conviction or inspire respect. Doubts would suggest themselves to the unsympathetic, or only partially sympathetic, listener whether the man was of altogether balanced mind. At such times, Mr. Sumner did not appreciate the force of language, or, indeed, know what he said; and, quite unconsciously on his part, he assumed an attitude of moral superiority and intellectual certainty, in no way compatible with a proper appreciation of the equality of others. In the mind of a man like Grant, these peculiarities excited obstinacy, anger and contempt. Thus, an agitator and exponent of ideas, Mr. Sumner might and did stimulate masses, but he was never, man or boy, a leader among equals. Moreover, as one of his truest friends and warmest admirers said of him, he was prone to regard difference of opinion as a moral delinquency.* Grant, on the contrary, not retentive of enmities, regardless of consistency, and of coarse moral as well as physical fibre, moved towards his ends with a stubborn persistency which carried others along with him, and against which a perfervid, rhetorical opposition was apt to prove unavailing.

* "A man who did not believe there was another side to the question, who would treat difference of opinion almost as moral delinquency." Geo. William Curtis, in his oration on Charles Sumner; *Orations and Addresses*, vol. iii, p. 230.

Mr. Fish stood between the two. So far as questions of foreign policy and problems of international law were concerned, though, as the result unmistakably showed, well grounded in fundamental principles and with a grasp of general conditions at once firm and correct, there is no evidence that, before his quite unexpected summons to the Department of State, the new Secretary had felt called upon to form definite conclusions. By nature cautious and conservative, not an imaginative man, having passed his whole life in a New York social and commercial environment, he would have inclined to proceed slowly in any path of expansion, most of all in one heading towards the tropics, and an admixture of half-breeds. So far as Great Britain was concerned, he would, on the other hand, be disposed to effect, if he could, an amicable, business-like settlement on rational terms. From the beginning he was inclined to think Mr. Sumner had in his speech gone too far,—that the positions he had taken were not altogether tenable. The British proclamation of May, 1861, he regarded as a “grievous wrong” under all the circumstances of the case, but he assented to the position of Lord Stanley that issuing it was within the strict right of the neutral, and the question of time was one of judgment. As he wrote to a friend in May, 1869, four weeks after Mr. Sumner had enunciated very different views in his Senate speech, the proclamation could be made subject of complaint only as leading in its execution and enforcement to the fitting out of the *Alabama*, &c., and the moral support given in England to the rebel cause. “Sumner’s speech was able and eloquent, and perhaps

not without a good effect. * * * Although the only speech made in the debate, it was not the argument of all who agreed in the rejection of the treaty, and we cannot stand upon it in all its points." Within a week of the rejection of the Johnson-Clarendon convention he wrote to another friend, "Whenever negotiations are resumed, the atmosphere and the surroundings of this side of the water are more favorable to a proper solution of the question than the dinner-tables and the public banquettings of England."

Thus from the very commencement there was an essential divergence of view between the Secretary of State and the Senator from Massachusetts, as well as between the latter and the President. As between Charles Sumner and Ulysses S. Grant, past friendly relations, similar social connections and common tastes would decidedly have drawn Mr. Fish towards the former; but, by nature loyal, he was distinctly repelled by Mr. Sumner's demeanor.

I have dwelt on these personal factors, and divergences of view and aim, for they must be kept constantly in mind in considering what was now to occur. They account for much otherwise quite inexplicable. In history as a whole,—the inexhaustible story of man's development from what he once was to what he now is,—the individual as a factor is so far minimized that the most considerable unit might probably have been left out of the account, and yet the result be in no material respect other than it is. Exceptional forces and individual traits counterbalance each other, tending always to average results. But with episodes it is not so. In them the individual has free play; and, accordingly, the personal

factor counts. The Treaty of Washington was an episode. In dealing with the conditions which led up to that treaty the minds of Charles Sumner and Hamilton Fish naturally moved on different lines; while it so chanced that the likes and dislikes, the objectives, surroundings and methods of Ulysses S. Grant,—disturbing factors,—entered largely into the result.

IV

In the years 1869 and 1870, as indeed throughout his public life, Charles Sumner was intent on the African, and questions of human right; while, in the matter of territorial expansion, looking vaguely to Canada and a Greater American policy, he would instinctively have been opposed to any movement in the direction of the tropics. President Grant, on the contrary, from the beginning of his first presidential term, was bent on early acquisitions in the West Indies, and disposed to adopt a summary tone towards Spain. As respects Great Britain, his attitude, one of comparative indifference, admitted of almost indefinite shaping. Mr. Fish, new, and not comfortable, in his unsolicited position, was inclined to be influenced,—almost to be led, by Sumner; but he at the same time looked to Grant as the head of the government, in which he himself held the place of precedence, and was disposed to give to his chief a thoroughly loyal support. New in their positions, and new to each other, they were all about to find their bearings. Under such circumstances, a stranger in the State Department and almost a novice on questions of interna-

tional law, the new Secretary seems in some degree to have turned to Caleb Cushing; nor could he among men then available at Washington have found a more competent or tactful adviser. Of decided parts, with good attainments and remarkable powers of acquisition, Caleb Cushing was a man of large experience, much human insight, and, while given to manipulation, he was not hampered either in council or in action by any excess of moral sensibility. He understood the situation; and he understood Mr. Sumner.

In the matter of the Queen's proclamation of May, 1861, and the concession of belligerent rights, it was thus a case of alternatives,—the rule of British accountability to be laid down for the new administration must not stand in the way of a more than possible line of aggressive action towards Spain. That the instructions now prepared for Mr. Motley were more rational than the positions assumed by Mr. Sumner four weeks before must be admitted; they were also more in accordance with recognized principles of international law. In his Senate speech Mr. Sumner had contended that, because of the proclamation, the liability of Great Britain must be fixed at amounts scarcely calculable in money,—a damage “immense and infinite,—“ a massive grievance,” all dependent on “this extraordinary manifesto,” the “ill-omened,” the “fatal” proclamation which “had opened the floodgates to infinite woes.” Mr. Fish, with the Cuba situation obviously in mind, declared, on the contrary, that the President recognized “the right of every power, when a civil conflict has arisen in another state, and has attained a sufficient complexity, magnitude and completeness,

to define its own relations and those of its citizens and subjects toward the parties to the conflict, so far as their rights and interests are necessarily affected by the conflict." Then followed some saving clauses, carefully framed; but, as already foreshadowed in Mr. Fish's correspondence, the precipitate character of the "unfriendly" proclamation was dwelt upon only as showing "the beginning and the *animus* of that course of conduct which resulted so disastrously to the United States." In the original draft, these instructions had been even more explicit on this point; and, for that reason, had led to a characteristic remonstrance on the part of Mr. Sumner. Having early got some inkling of their character he at once went to the State Department, and there, speaking to the Assistant Secretary in a loud voice, tremulous and vibrating with excitement, he had exclaimed—"Is it the purpose of this Administration to sacrifice me,—me a Senator from Massachusetts?"—and later he wrote to the Secretary himself declaring his dissent "from the course proposed," on the ground that "as chairman of the Senate Committee I ought not in any way to be a party to a statement which abandons or enfeebles any of the just grounds of my country as already expounded by Seward, Adams, and myself." To this more than merely implied threat, Mr. Fish had contented himself by replying that whether the modifications were of greater or of less significance, they could "hardly be of sufficient importance to break up an effort at negotiation, *or to break down an Administration.*" Mr. Cushing here intervened, and his skilful hand temporarily adjusted the difficulty. The adjustment was, however, only temporary. The

inevitable could not be averted. Coming events already cast their shadow before.

To revive in detail the painful Motley imbroglio of 1870 is not necessary for present purposes. Suffice it to say that, when he reached England, Mr. Motley was, apparently, quite unable to clear his mind of what might, perhaps, not inaptly be described as the Proclamation Legend; and, both in his official interviews with the British Foreign Secretary and in social talk, he failed to follow, and apparently did not grasp, the spirit of his instructions. Confessing to a "despondent feeling" as to the "possibility of the two nations ever understanding each other or looking into each other's hearts," in his first interview with Lord Clarendon he fell heavily back on the ubiquitous and everlasting proclamation, as the "fountain head of the disasters which had been caused to the American people, both individually and collectively." Historically untrue and diplomatically injudicious, this tone and stand evinced, on the part of Mr. Motley, an inability to see things in connection with his mission otherwise than as seen by Mr. Sumner. His misapprehension of the objects his official superior had in view was obvious and complete. As it was almost immediately decided that, so far as the settlement of outstanding difficulties between the two nations was concerned, any future negotiations should be conducted in Washington, Mr. Motley ceased at this point to be a considerable factor in the course of events.

In the mean time an extremely adroit, though unofficial, intermediary had appeared on the stage. His presence almost immediately made itself felt.

Born in Scotland in 1820, and emigrating with his parents to America at the age of sixteen, Sir John Rose, or Mr. Rose as he still was in 1869, had been for a number of years prominent in Canadian public life. A natural diplomat of a high order, he was at this time acting as British commissioner on the joint tribunal provided by the treaty of 1863 to arbitrate the claims of the Hudson's Bay and Puget Sound Companies. Mr. Caleb Cushing was of counsel in that business, and relations of a friendly nature grew up between him and the British arbitrator. Whether already privately authorized so to do or not, Mr. Rose, who was very solicitous of an arrangement between the two nations, skilfully instilled into Mr. Cushing a belief that he, Mr. Rose, might be of use in the delicate work of reopening negotiations on new lines. Accordingly on the 26th of June,—only eight weeks after the rejection of the Johnson-Clarendon convention, and sixteen days after Mr. Motley's despondent interview with Lord Clarendon just referred to,—Mr. Cushing, then in Washington, wrote to Mr. Rose, in Ottawa. Referring to previous letters between them, he now told him that he had that day seen Secretary Fish, and had arranged for Mr. Rose to meet him. "I am," he wrote, "not sanguine of *immediate* conclusion of such a treaty as either you or I might desire. But I think the time has arrived to *commence*, trusting that discretion, patience and good will on both sides may eventuate, in this important matter, satisfactorily to the two governments." * Accord-

* In this letter Mr. Cushing significantly went on to say—"In view of the disposition which the Senate of the United States has recently shown to assume more than its due, or at least than its usual part,

ingly, on the 8th of July, Mr. Rose called on the Secretary in Washington. The first of the interviews which led up to the Treaty of Washington two years later took place next day at Mr. Fish's dinner table. The basis of a settlement was then discussed, and that subsequently reached outlined by Mr. Fish, who laid especial emphasis on the necessity of "some kind expression of regret" on the part of Great Britain over the course pursued in the Civil War. The two even went so far as to consider the details of negotiation. The expediency of a special commission to dispose of the matter was discussed, and the names of the Duke of Argyll and John Bright were considered in connection therewith.

Immediately after this interview Mr. Rose went to England. His own official and personal relations with men high in influence were close; and, moreover, another personage of rapidly growing consequence in English ministerial circles was now at work laboring earnestly and assiduously to promote an adjustment. In 1869 William E. Forster was fast rising into the first rank among English public men. President of the Privy Council in Mr. Gladstone's first ministry, he was at this juncture acting as Minister of Education. Nine years later, in the second Gladstone ministry, he was to occupy the crucial position of Secretary for Ireland. Always, from his first entrance into public life in 1861, an

in the determination of international questions, you will appreciate the unreadiness of the Executive, at the present time, to take upon itself any spontaneous or doubtful ventures, especially on the side of England." The reference was, of course, to Mr. Sumner, and pointed to an already developing source of trouble. Grant's first presidential term was yet in its fourth month only.

earnest, outspoken, consistent and insistent friend of democratic United States,—during the Civil War the one in that small group of friends held by Mr. Adams in “most esteem,”—Mr. Forster was now strenuous in his advocacy of a broad settlement of the issues arising out of the Rebellion, and the honest admission by Great Britain of the ill-considered policy then pursued. His name also had been discussed by Mr. Fish and Mr. Rose as one of the proposed special mission.

Within less than two months, therefore, of the rejection of the Johnson-Clarendon convention, the Treaty of Washington was in the air; and, curiously enough, at the very time Mr. Motley in London was confessing to Lord Clarendon his “despondent feeling” in view of the “path surrounded by perils,” and talking of “grave and disastrous misunderstandings and cruel wars,” Secretary Fish and Mr. Rose, comfortably seated at a dinner table in Washington, were quietly paving the way to a complete understanding. Nothing more occurred during that summer; but in the course of it Mr. Fish thus expressed his views in a letter to a correspondent,—an expression at this early date to which subsequent events lent much significance:—
“The two English-speaking progressive liberal Governments of the world should not, must not, be divided—better let this question rest for some years even (if that be necessary) than risk failure in another attempt at settlement. I do not say this because I wish to postpone a settlement—on the contrary, I should esteem it the greatest glory, and greatest happiness of my life, if it could be settled while I remain in official position; and I should

✓ esteem it the greatest benefit to my country to bring it to an early settlement. * * * I want to have the question settled. I would not, if I could, impose any humiliating condition on Great Britain. I would not be a party to anything that proposes to 'threaten' her. I believe that she is great enough to be just; and I trust that she is wise enough to maintain her own greatness. No greatness is inconsistent with some errors. Mr. Bright thinks she was drawn into errors—so do we. If she can be brought to think so, it will not be necessary for her to say so;—at least not to say it very loudly. It may be said by a definition of what *shall* be Maritime International Law in the future, and a few kind words. She will want in the future what we have claimed. Thus she will be benefited—we satisfied." / Written in the early days of September, 1870, this letter set forth clearly the position of Mr. Fish; it also correctly foreshadowed the course of the diplomacy which had already been entered upon.

During the autumn of 1869 the *Alabama* claims, and the unsatisfactory relations of the country with Great Britain, were discussed at more than one Cabinet meeting in Washington. At this time, while the Secretary of State professed himself as ready to negotiate whenever England came forward with a fairly satisfactory proposition, the President favored a policy of delay. Presently, Mr. Rose was again heard from. The letter he now wrote has since often been referred to and much commented upon, though it was over twenty years before its authorship was revealed. In it he said,—“I have had conversations in more than one quarter,—which

you will readily understand without my naming them, and have conveyed *my own belief*, that a kindly word, or an expression of regret, such as would not involve an acknowledgment of wrong, was likely to be more potential than the most irrefragable reasoning on principles of international law." Mr. Rose then went on to touch upon a very delicate topic,—Mr. Motley's general London presentation of his country's attitude. "Is your representative here," he added, "a gentleman of the most conciliatory spirit? * * * Does he not—perhaps naturally—let the fear of imitating his predecessor influence his course so as to make his initiative hardly as much characterized by consideration for the sensibilities of the people of *this* country, as of his own. * * * I think I understood you to say, that you thought negotiations would be more like to be attended with satisfactory results, if they were transferred to, and were concluded at, Washington; because you could from time to time communicate confidentially with leading Senators, and know how far you could carry that body with you. * * * But again is your representative of that mind?—and how is it to be brought about? By a new, or a special envoy—as you spoke of—or quietly through Mr. Thornton? * * * If I am right in my impression that you would prefer Washington and a new man, and you think it worth while to enable me to repeat that suggestion as one from myself in the proper quarter, a line from you—or if you prefer it, a word by the cable, will enable me to do so."

Eight days later, on the 11th of the same month, Mr. Rose again wrote to Mr. Fish, calling his at-

tion to the speech of Mr. Gladstone at the Guildhall, which, he said, "hardly conveys the impression his tone conveyed with reference to United States affairs. There was an *earnest* tone of friendship that is hardly reproduced."

At the time these letters reached Mr. Fish the relations between him and Mr. Sumner were close and still friendly. The Secretary spoke to the Senator freely of Mr. Rose's visits, and consulted with him over every step taken. Knowing that Mr. Sumner and Mr. Motley were constantly interchanging letters, he took occasion to advise Mr. Sumner of the intimations which had thus reached him, giving, of course, no names, but saying simply that they were from a reliable quarter. The well-meant hint was more than disregarded, Mr. Sumner contenting himself with contemptuous references to the once celebrated McCracken episode. Years afterwards, in the same spirit, Mr. Motley's biographer sneeringly referred to the still unnamed writer of the Rose letters as "a faithless friend, a disguised enemy, a secret emissary or an injudicious alarmist." *

The reply of Mr. Fish to the letters of Mr. Rose revealed the difficulties of the Secretary's position. The individuality of Mr. Sumner made itself felt at every point. In London, Mr. Motley reflected the views of the chairman of the Senate Committee on Foreign Affairs rather than those of the Secretary of State; in Washington, the personal relations of Mr. Sumner with the British Minister were such as to render the latter undesirable at least as a me-

* O. W. Holmes, *Memoir of John Lothrop Motley* (1879), pp. 178-9.

dium of negotiation. Referring first to his intimations concerning Mr. Motley, Mr. Fish replied to Mr. Rose as follows :—

“ Your questions respecting our Minister, I fear may have been justified by some indiscretion of expression, or of manner, but I hope only indiscretions of that nature. Intimations of such had reached me. I have reason to hope that if there have been such manifestations they may not recur. Whatever there may have appeared, I cannot doubt his desire to aid in bringing the two Governments into perfect accord. * * * I have the highest regard for Mr. Thornton, and find him in all my intercourse, courteous, frank, and true. A gentleman with whom I deal and treat with the most unreserved confidence. He had, however, given offence to Mr. Sumner (chairman of the Senate Committee on Foreign Relations), whose position with reference to any future negotiation you understand. I chance to know that Mr. Sumner feels deeply aggrieved by some things which Mr. Thornton has written home, and although he would not consciously allow a personal grief of that nature to prejudice his action in an official intercourse with the representative of a State, he might unconsciously be led to criticism unfavorable to positions which would be viewed differently, if occupied by some other person. * * * I am very decidedly of opinion that whenever negotiations are to be renewed, they would be more likely to result favorably here than in London. I have so instructed Mr. Motley to say, if he be questioned on the subject.”

Such was the posture of affairs at the close of the

year 1869. Events now moved rapidly, and the general situation became more and more complicated. In Europe, the war-clouds which preceded the Franco-Prussian storm-burst of 1870 were gathering; in America, President Grant was, persistently as earnestly, pressing his schemes of West Indian annexation. In London, Mr. Rose was informally sounding the members of the government to ascertain how far they were willing to go; in Washington, Mr. Thornton was pressing the Secretary "with much earnestness to give him an intimation of what would be accepted" by the United States. The outbreak of hostilities between France and Germany six months later brought matters, so far as Great Britain was concerned, fairly to a crisis. In presence of serious continental complications,—in imminent danger of being drawn into the vortex of conflict,—Great Britain found itself face to face with the *Alabama* precedents. Like "blood-bolter'd" Banquo, they would not down. The position was one not likely to escape the keen eye of Prince Bismarck. England's hands were tied. Internationally, she was obviously a negligible quantity. The principles laid down and precedents established only six years before were patent,—fresh in the minds of all. Her Majesty's government remembered them; Prince Bismarck was advised of them; each was well aware of the other's knowledge. The Gladstone ministry were accordingly in an extraordinarily receptive mental condition.

Such being the state of affairs in Europe, on this side of the Atlantic the situation complicated itself no less rapidly. It was in the early days of January that President Grant dropped in one evening

at Mr. Sumner's house, while the latter was at dinner with some friends, and sought to enlist the influence of the chairman of the "Senate Judiciary Committee," as he would designate him, in support of the scheme for the annexation of San Domingo. What followed is familiar history. During the immediately ensuing months there took place a complete division between the two men. They thereafter became not only politically opposed, but bitter personal enemies.

To all outward appearances during those months no advance whatever was being made towards a British adjustment; but, in point of fact, both time and conditions were now ripe for it. In the early days of September, 1870, the Imperial government of France collapsed at Sedan; and on the 13th of that month M. Thiers arrived in London soliciting on behalf of the new French republic the aid and good offices of Great Britain. His mission was, of course, fruitless; but, none the less, it could not but emphasize the difficulty of England's position. If it failed so to do, a forcible reminder from America was imminent, and followed almost immediately. In December, with Paris blockaded by the Prussians, France was brought face to face with dismemberment. The general European situation was from an English point of view disquieting in the extreme. At just this juncture, within one week of the day on which his Parliament called on the Prussian King to become Emperor of Germany, and the delegate government, to avoid a German army operating in the heart of France, removed its sittings from Tours to Bordeaux,—at just this juncture (December 5th) President Grant took oc-

casion to incorporate the following passage into his annual message:—

✓ "I regret to say that no conclusion has been reached for the adjustment of the claims against Great Britain growing out of the course adopted by that Government during the rebellion. The cabinet of London, so far as its views have been expressed, does not appear to be willing to concede that Her Majesty's Government was guilty of any negligence, or did or permitted any act during the war by which the United States has just cause of complaint. Our firm and unalterable convictions are directly the reverse. I therefore recommend to Congress to authorize the appointment of a commission to take proof of the amount and the ownership of these several claims, on notice to the representative of Her Majesty at Washington, and that authority be given for the settlement of these claims by the United States, so that the Government shall have the ownership of the private claims, as well as the responsible control of all the demands against Great Britain. It can not be necessary to add that whenever Her Majesty's Government shall entertain a desire for a full and friendly adjustment of these claims the United States will enter upon their consideration with an earnest desire for a conclusion consistent with the honor and dignity of both nations."

The hint thus forcibly given was not lost in London. The educational process was now complete. The message, or that portion of it which most interested the British public, appeared in the London journals of December 6th, and was widely commented upon. Exactly five weeks later, on the 9th

of January, 1871, Mr. Rose was again in Washington. Coming ostensibly on business relating to the Dominion of Canada, he was in reality now at last empowered to open negotiations looking to an immediate settlement. The very evening of the day he arrived Mr. Rose dined with Mr. Fish. The after-dinner talk between the two, lasting some five or six hours, resulted in a confidential memorandum. More carefully formulated by Mr. Rose the following day, this paper reached Mr. Fish on the 11th of January. He expressed himself, on acknowledging its receipt, as inspired with hope.

Hamilton Fish was neither an ambitious nor an imaginative man. Though he held the position of Secretary of State during both of the Grant administrations, he did so with a genuine and well-understood reluctance, and was always contemplating an early retirement. At this juncture, however, there can be no doubt his ambition was fired. That which a year before he had pronounced as, among things possible, "the greatest glory and the greatest happiness of his life" was within his reach. He was to be the official medium through which a settlement of the questions between "the two English-speaking, progressive-liberal" countries was to be effected. That was to be his monument. To a certain extent, also, conditions favored him. Mr. Sumner and his Senate speech on the Johnson-Clarendon convention were the great obstacles in the way. For, as Mr. Fish had himself expressed it a year previous,—“The eloquence, and the display of learning and of research in [that] speech, and,—perhaps above all,—the gratification of the laudable pride of a people in be-

ing told of the magnitude of wealth in reserve for them in the way of damages due from a wealthy debtor, captivated some, and deluded more." Of this wide-spread popular feeling, reinforced by the anti-British and Fenian sentiment then very prevalent, account had to be taken. But, on the other hand, Mr. Sumner's lukewarmness as respects any settlement at that time, much more his possible opposition to one originating with the State Department, indirectly forwarded that result. The President and the Massachusetts Senator were now in open conflict over the former's policy of West Indian expansion; and in that struggle Secretary Fish had most properly, if he remained in office, taken sides with his official head. The Motley imbroglio had followed. With the most friendly feeling towards Mr. Motley personally, and sincerely desirous of avoiding so far as possible any difficulty with Mr. Sumner, Mr. Fish's expressed wish was to continue Mr. Motley in his position, taking from him all part in the proposed negotiation and giving him implicit instructions in no way to refer to it, or seek to influence it. He was practically to be reduced to a functional representative. To this the President would not assent. He insisted that Mr. Motley represented Mr. Sumner more than he did the Administration, and he declared in a Cabinet meeting, at which the matter was discussed, that he would "not allow Sumner to ride over" him. The Secretary continued to plead and urge, but in vain. The President was implacable. It was then suggested that Mr. Sumner should himself be nominated to succeed Motley, and Gen. Butler and Mr. Cameron called on the Secretary to advocate this

solution of the difficulty. They pronounced Sumner impractical and arrogant, and urged that he should be got out of the way by any practicable method. This suggestion also was discussed at a Cabinet meeting, and the President expressed a willingness to make the nomination on condition that Sumner would resign from the Senate; but he also intimated a grim determination to remove him from his new office as soon as he had been confirmed in it. At last Mr. Fish was compelled to yield; and, under the President's implicit direction, he wrote to Mr. Motley a private letter, couched in the most friendly language, in which he intimated as clearly as he could that so doing was most painful to him, but he must ask for a resignation. The whole transaction has since been exhaustively discussed, and it is unnecessary to revive it. It is sufficient to say that what was then done, was done by Gen. Grant's imperative order, and solely because of Mr. Motley's intimate personal relations with Mr. Sumner, and the latter's opposition to the President's Dominican policy. The urgent and repeated remonstrances of the Secretary of State were of no avail. A victim of political mischance, Mr. Motley was thus doomed to illustrate the truth of Hamlet's remark as to the danger incurred by him of lesser weight who chances

“ Between the pass and fell incensed points
Of mighty opposites.”

It may be said, however, that, in view of the close personal relations existing between Mr. Sumner and Mr. Motley, and their constant interchange of letters of the most confidential character, it is not

easy to see how the latter could have been allowed to remain at London, the supposed representative of the government, with the Massachusetts Senator in open opposition to the Administration. In view of the renewal of active negotiations, the estrangement of the one apparently necessitated the displacement of the other.

The anger of the President towards the Massachusetts Senator now knew no bounds ; for those about the White House, holding there confidential relations, openly asserted that Mr. Sumner had more than intimated that that he, Grant, was intoxicated when, early in January, 1870, he had made his memorable after-dinner call at his, the Senator's, house. Mr. Motley refused to resign. His removal was thereupon ordered. This was delayed as long as possible by Mr. Fish, as he expected then himself shortly to retire, and was more than willing to leave the final act of displacement to his successor. At the last moment he was, however, prevailed upon to continue in office, sorely against his own wishes ; and, what then, as respects the English mission, occurred, is matter of record. That the patience of the Secretary had been sorely tried during the intervening time, does not admit of question. To this subject, and the probable cause of his irritation, I shall have occasion to refer presently. Unfortunately, as is apt to be the case with those of Netherlandish blood, though slow to wrath, Mr. Fish's anger, once aroused, was neither easily appeased nor kept within conventional bounds ; and now it extended beyond its immediate cause. He felt aggrieved over the course pursued by Mr. Motley. In it he saw no regard for the difficulties of

the position in which he himself stood, and he was especially provoked by the minister's voluminous record of the circumstances attending his displacement, placed by him on the files of the Department, and entitled "End of Mission." Accordingly, Mr. Fish's long-contained anger found expression in the well-known letter, addressed to Mr. Moran, secretary of the Legation at London, and then acting as *chargé des affaires*. This letter, in a first draught, was read by the Secretary to the President, Vice-President Colfax, and Mr. Conkling before it was despatched; and, while the last named gave to it his approval, the President not only declined to allow certain alterations suggested by Mr. Colfax to be made, but expressed his wish that not a word in the paper be changed.

Immaterial as all this may at first seem, it had a close and important bearing on the negotiations preliminary to the Treaty of Washington, now fairly initiated. The cabinet had, during the summer of 1870, been divided over the Dominican issue. The Attorney-General, E. R. Hoar, had opposed the ratification of the treaty, and the President thereupon, and for that reason, called for his resignation. In advising the Secretary of State of this fact, Gen. Grant took occasion to express his sense of the support Mr. Fish had given the measure, and to intimate his sense of obligation therefor. He probably felt this the more, as he was not unaware that Mr. Fish had taken the course he did solely from a sense of loyalty, and in opposition to his own better judgment. Mr. Fish looked upon the treaty as a measure of policy inaugurated by the head of the Administration; and, after the pol-

icy involved was fairly entered upon, did what he properly could to forward it. This, also, notwithstanding the fact that the treaty had been most irregularly negotiated in derogation of the Department of State, and that it was in charge of persons whose standing had in no degree increased public confidence. But such loyalty of action appealed strongly to General Grant, and, in return for it, he stood ready to approve any policy towards Great Britain the Secretary might see fit to recommend. If, moreover, such a policy implied of necessity a conflict with Mr. Sumner, it would, for that very reason, be only the more acceptable. The President thus became a tower of strength in the proposed negotiation.

Still while, on the whole, the conditions contributing to success seemed to predominate, the fate of the Johnson-Clarendon convention had to be borne in mind. Mr. Sumner was chairman of the Senate Committee on Foreign Relations. To defeat the result of a negotiation, it was necessary to control but a third of the Senate; and his influence in that body had recently been emphasized by the rejection of the Dominican treaty, in favor of which the President had made use of every form of argument and inducement within the power of an Executive to employ. So, after the proposal of Sir John Rose had been discussed by the Secretary with Senator Conkling and Gen. Schenck, the newly designated minister to England, it was agreed that Mr. Fish should seek an interview with the Massachusetts Senator, and; by a great show of consideration, see if he could not be induced to look favorably on the scheme.

What ensued was not only historically interest-

ing, but to the last degree characteristic; it was, moreover, altogether unprecedented. The Secretary of State actually sounded the way to an interview with the chairman of a Senate Committee through another member of that committee,—a species of “mutual friend,”—the interview in question to take place, not at the Department of State, but at the house of the autocratic chairman. The meeting was arranged accordingly; and, on the evening of the 15th of January, four days only after Sir John Rose’s arrival in Washington, Mr. Fish, with Sir John’s confidential memorandum in his pocket, stood at Mr. Sumner’s door. In the meeting that ensued the business in hand was discussed. When the Secretary took his leave, the memorandum of Sir John Rose was at his request left with Mr. Sumner, who promised, after fuller consideration, shortly to return it.

Then in due time followed one of the most curious incidents in diplomatic history, an incident than which few could more strikingly illustrate the changes which in a comparatively short space of time take place in public opinion, and the estimate in which things are held. Two days later, on the 17th of January, the Rose memorandum was returned to Secretary Fish by Senator Sumner with a brief note embodying this, to those of the present time, fairly astounding proposition:—

“First.—The idea of Sir John Rose is that all questions and causes of irritation between England and the United States should be removed absolutely and forever, that we may be at peace really, and good neighbors, and to this end all points of difference should be considered together. Nothing

could be better than this initial idea. It should be the starting-point.

“Second.—The greatest trouble, if not peril, being a constant source of anxiety and disturbance, is from Fenianism, which is excited by the British flag in Canada. Therefore the withdrawal of the British flag cannot be abandoned as a condition or preliminary of such a settlement as is now proposed. To make the settlement complete, the withdrawal should be from this hemisphere, including provinces and islands.”

V

SINCE his death, nearly thirty years ago, Charles Sumner has been made the subject of one of the most elaborate biographies in the language. Patient and painstaking to the last degree, nothing seems to have escaped the notice of Mr. Pierce, and the one conspicuous fault of his work is its extreme length. It is conceived and executed on a scale which assumes in the reader an interest in the subject, and an indifference to toil, commensurate with those of the author. The official biography of Lincoln by Messrs. Nicolay and Hay is not inaptly called by them “A History”; and its ten solid volumes, averaging over 450 pages each, defy perusal. Life simply does not suffice for literature laid out on such a Brobdingnagian scale; all sense of proportion is absent from it. Yet the ten volumes of the Lincoln include but a quarter part more reading matter than Mr. Pierce’s four. On a rough estimate, it is computed that these fourteen volumes contain some two million words. The most re-

markable and highly characteristic memorandum just quoted is expressed in about 220 words, and yet for it Mr. Pierce found no space in his four massive volumes. He refers to it indeed, showing that he was aware of its existence; but he does so briefly, and somewhat lightly; treating it as a matter of small moment, and no significance.* Mr. Storey, in his smaller biography of Sumner, makes no reference at all to it; apparently it failed to attract his notice. And yet, that memorandum is of much historical significance. A species of electric flash, it reveals what then was, and long had been, in Sumner's mind. It makes intelligible what would otherwise remain well-nigh incomprehensible; if, indeed, not altogether so.

To those of this generation,—especially to us with the war in South Africa going on before our eyes,—it would seem as if the first perusal of that memorandum of January 17th must have suggested to Mr. Fish grave doubts as to Mr. Sumner's sanity. It reads like an attempt at clumsy ridicule. The Secretary of State had gone to an influential Senator in a serious spirit, suggesting a business settlement of grave international complications; and he was met by a proposition which at once put negotiation out of the question. What could the man mean? Apparently, he could only mean that he did not intend to permit any adjustment to be effected, if in his power to prevent. Such unquestionably is the impression this paper now conveys. Meanwhile, strange as it seems, when received it could have occasioned Mr. Fish no special wonder; except, perhaps, in its wide inclusiveness, it sug-

* Pierce's *Sumner*, vol. iv, pp. 480-1.

gested nothing new, nothing altogether beyond the pale of reasonable expectation, much less of discussion. It brought no novel consideration into debate. And this statement, surprising now, measures the revolution in sentiment as respects dependencies during the last thirty years.

"From 1840 to, say, 1870, the almost universal belief of thoughtful Englishmen was that the colonies contributed nothing or little to the strength of England. We were bound, it was thought, in honor, to protect them; the mother country should see that her children were on the road to become fit for independence; the day for separation would inevitably come; the parting when it took place should be on friendly terms; but the separation would be beneficial, for both parent and children. Even a Conservative minister spoke, or wrote, it is said, about our 'wretched colonies.' To-day the whole tone of feeling is changed; her colonies are, it is constantly asserted, both the glory and the strength of Great Britain. Not the extremest Radical ventures to hint a separation." * To similar effect another authority, an American, referring to the same period, says—"We find England declining to accept New Zealand when offered to her by English settlers; treating Australia as a financial burden, useful only as a dumping ground for criminals; discussing in Parliament whether India be worth defending; questioning the value of Hong-Kong, and even refusing to be responsible for territories in South Africa." † Even as late as

* Letter signed "An Observer," dated Oxford, August 22, 1901, in New York *Nation* of September 12, 1901.

† Poultney Bigelow, *The Children of the Nations*, p. 332.

1881, ten years after the negotiation of the Treaty of Washington, there can be little doubt that this feeling,—the conviction of the little worth of dependencies,—inspired the policy pursued towards the South African republics by the second Gladstone administration, after the disaster of Majuba Hill.

In the mind of Mr Sumner, the ultimate, and, as he in 1870 believed, not remote withdrawal of all European flags, including, of course, the British, from the western hemisphere, was a logical development of the Monroe doctrine. That doctrine, as originally set forth, was merely a first enunciation, and in its simplest form, of a principle which not only admitted of great development but was in the direct line of what is known as Manifest Destiny. Secretary Seward's Alaska acquisition, bringing to an end Russian dominion in America, created a precedent. One European flag then disappeared from the New World. Those of Spain and Great Britain only remained; and, more than twenty years before Richard Cobden had written to Sumner, "I agree with you that Nature has decided that Canada and the United States must become one for all purposes of inter-communication. * * *

If the people of Canada are tolerably unanimous in wishing to sever the very slight thread which now binds them to this country, I see no reason why, if good faith and ordinary temper be observed, it should not be done amicably." Charles Sumner did not belong to the Bismarckian school of statesmanship,—he was no welder in blood and iron; and these words of Cobden furnished the key of the situation as it lay in his essentially doctrinaire

mind. He, accordingly, looked forward with confidence to the incorporation of British Columbia into the American Union; but he always insisted that it "should be made by peaceful annexation, by the voluntary act of England, and with the cordial assent of the colonists." Nor, in April, 1869, when he delivered his National Claims, or Consequential Damages, speech in the Senate, did this result seem to him remote. Five months later, still borne forward on the crest of a flooding tide,—little prescient of the immediate future,—he quoted before the Massachusetts State Republican convention Cobden's words of prophecy, and triumphantly exclaimed—"The end is certain; nor shall we wait long for its mighty fulfilment. In the procession of events it is now at hand, and he is blind who does not discern it." *

Read with this clue in mind Mr. Sumner's utterances between 1869 and 1871,—including his speech on the Johnson-Clarendon treaty, his address before the Massachusetts Republican convention in the following September, and his memorandum to Secretary Fish of sixteen months later,—become intelligible, and are consecutive. The claims against Great Britain, mounting into the thousands of millions, were formulated and advanced by him as no vulgar pot-house score, to be itemized, and added up in the form of a bill, and so presented for payment. On the contrary, they were merely one item in the statement of a "massive grievance," become matter of gravest international debate. The settlement was to be commensurate. Comprehensive, grandiose even, it was to include a hemispheric flag-

* Works, vol. xiii, p. 129.

withdrawal, as well as a revision of the rules of international law. The adjustment of mere money claims was a matter of altogether minor consideration; indeed, such might well in the end become makeweights,—mere pawns in the mighty game.

It is needless to say that the unexpected was sure to occur in the practical unfolding of this picturesque programme. Indeed, a very forcible suggestion of the practical danger involved in it, just so long as the average man is what he is, was brought home to the Senator from Massachusetts when he resumed his seat in executive session after completing his speech on the Johnson-Clarendon treaty,—the carefully prepared opening of the great world debate. Mr. Zachary Chandler, of Michigan, subsequently took the floor. He was a Senator much more closely than Mr. Sumner representative of the average American public man. And Mr. Chandler proceeded unconsciously to furnish an illustration of the practical outcome of Mr. Sumner's scheme as he, the average American, understood it. He entirely concurred in Mr. Sumner's presentation of national injuries, consequential damages, and a sense of "massive grievance." "If Great Britain," he then went on to say, "should meet us in a friendly spirit, acknowledge her wrong, and cede all her interests in the Canadas in settlement of these claims, we will have perpetual peace with her; but, if she does not, we must conquer peace. We cannot afford to have an enemy's base so near us. It is a national necessity that we should have the British possessions. He hoped such a negotiation would be opened, and that it would be a peaceful one; but, if it should not

be, and England insists on war, then let the war be 'short, sharp, and decisive.' " * The report of these utterances was at once transmitted by the British minister to his government; and, taken in connection with Mr. Sumner's arraignment and his presentation of consequential damages, furnished those composing that government, as well as Professor Goldwin Smith, with much food for thought.

The policy proper to be pursued in the years following 1869 rapidly assumed shape in Mr. Sumner's mind. He worked it out in every detail. As, shortly after, he wrote to his friend, Dr. S. G. Howe, — "I look to annexation at the North. I wish to have that whole zone from Newfoundland to Vancouver." It was with this result distinctly present to him, and as a first step thereto, that he secured the English mission for Mr. Motley. Through Motley he thought to work. He, chairman of the United States Senate Committee on Foreign Relations, was to mould and shape the future of a hemisphere,—President, Secretary of State, and Her Majesty's ministers being as clay in his potter hands, with Motley for the deftly turning wheel. Concerning this project he seems during the summer of 1869 to have been in almost daily correspondence with his friend near the Court of St. James, and in frequent conference with Secretary Fish at Washington. On June 11th, he wrote to the former that the Secretary had the day before sounded the British minister on the subject of Canada, the American claims on Great Britain being too large to admit of a money settlement. Sir Edward Thornton,

* See report of debate in New York *Tribune*, April 27, 1869.

he went on, had replied that England had no wish to keep Canada, but could not part with it without the consent of the population. And now the Secretary wanted Mr. Sumner to state the amount of claims; to which he had replied that he did not regard it as the proper time for so doing. This letter, it so chanced, was dated the very day after Mr. Motley's first unfortunate interview with the British Foreign Secretary; and that diplomatic jeremiad might not inaptly have concluded with a premonitory hint of what his mentor and guide was on the morrow to write. Then, only four days later,—on the 15th of June,—Mr. Sumner again advises his correspondent of a dinner-table talk with men in high official circles, and significantly adds—"All think your position is as historic as any described by your pen. England must listen, and at last yield. I do not despair seeing the debate end—(1) In the withdrawal of England from this hemisphere; (2) In remodeling maritime international law. Such a consummation would place our republic at the head of the civilized world." And, five days afterwards, he writes in the same spirit, referring apparently to the Secretary of State,—“With more experience at Washington, our front would have been more perfect.”* The “debate” referred to was, of course, that “international debate, the greatest of our history, and, before it is finished, in all probability the greatest of all history.” Thus, in June, 1869, the chairman of the Senate Committee on Foreign Affairs was sending what were in effect unofficial instructions to a facile national representative, couched, be it noticed, in the very words used by the writer

* Pierce's *Sumner*, vol. iv, pp. 409-12.

eighteen months later in the memorandum just quoted.

In one of these letters it will be observed Mr. Sumner told Motley that Secretary Fish had that day sounded the British minister as to a possible cession of Canada in liquidation of our national claims, and appeasement of our sense of "massive grievance." * The statement was correct; and not only at this juncture but repeatedly was a comprehensive settlement on this basis urged on the British government. Both President and Secretary were thus of one mind with Mr. Sumner. In November, 1869, for instance, four months after Sir John Rose's first visit to Washington, and at the very time he was writing to Mr. Fish about Mr. Motley's attitude in London, an entire cabinet meeting was occupied in a discussion of the *Alabama* claims. The President then suggested the possibility of Great Britain quitting Canada; and he intimated his belief that, in such case, we ought to be satisfied with the payment for the losses actually sustained through the Confederate commerce-destroyers, combined with a settlement satisfactory to us of the principles of maritime neutrality law. A few days later he expressed his unwillingness at that time to adjust the claims; he wished them kept open until Great Britain was ready to give up Canada. When certain members of the cabinet thereupon assured him that Great Britain looked upon Canada as a source of weakness, quoting Lord Carlisle and Sir Edward Thornton, the President at once replied—"If that be so, I would be willing to settle at once." During the following weeks,—December, 1869, and Janu-

* Pierce's *Sumner*, vol. iv, p. 409.

ary, 1870,—the subject was frequently discussed between Secretary Fish and the British minister. The former urged on the latter the entire withdrawal of Great Britain from Canada, and an immediate settlement of all claims on that basis. To this Sir Edward Thornton replied,—“Oh, you know that we cannot do. The Canadians find fault with me for saying so openly as I do that we are ready to let them go whenever they shall wish ; but they do not desire it.” In its issue of December 18th, 1869, while these conversations, taking place in Washington, were duly reported in Downing St., the *Times*, probably inspired, expressed itself as follows :—“Suppose the colonists met together, and, after deliberating, came to the conclusion that they were a long way off from the United Kingdom, and that every national motive of contiguity, similarity of interest, and facility of administration induced them to think it more convenient to slip into the Union than into the Dominion,—should we oppose their determination? We all know that we should not attempt to withstand it, if it were clearly and intelligibly pronounced. * * * Instead of the Colonies being the dependencies of the Mother Country, the Mother Country has become the Dependency of the Colonies. We are tied while they are loose. We are subject to a danger while they are free.” And a few months later, when the Dominion undertook to find fault with some of the provisions of the Treaty of Washington, the same organ of English opinion thus frankly delivered itself :—“From this day forth look after your own business yourselves ; you are big enough, you are strong enough, you are intelligent enough, and, if

there were any deficiency in any of these points, it would be supplied by the education of self-reliance. We are both now in a false position, and the time has arrived when we should be relieved from it. Take up your freedom ; your days of apprenticeship are over." In view of such utterance as these from the leading organs of the mother country, Mr. Sumner certainly had grounds for assuming that a not unwilling hemispheric flag-withdrawal by Great Britain was more than probable in the early future.

Returning to what took place in Washington in March, 1870, on the eve of the Franco-Prussian war, Secretary Fish had another long conversation with Sir Edward Thornton which showed forcibly how conscious those composing the English ministry were of the falseness of Great Britain's position, and of the imminence of danger. The Secretary again urged on the Minister that her American provinces were to Great Britain a menace of danger ; and that a cause of irritation, and of possible complication, would, especially in those times of Fenianism, be removed, should they be made independent. To this Mr. Thornton replied — " It is impossible for Great Britain to inaugurate a separation. They are willing, and even desirous, to have one. Europe may at any moment be convulsed ; and, if England became involved, it would be impossible to prevent retaliation, and the ocean would swarm with *Alabamas*. England would then be compelled to declare war." The Secretary consoled him by agreeing that commerce-destroyers would then be fitted out in spite of all the government might, or could, attempt to prevent them.

Up to this point the chairman of the Senate

Committee on Foreign Affairs, the President, the Secretary of State and the members of the Cabinet generally had gone on in happy concurrence. They had the same end in view. But now the cleavage between President and Senator rapidly widened. A week only after the conversation with Sir Edward Thornton last referred to, Gen. Grant cautioned Mr. Fish against communicating to Mr. Sumner any confidential or important information received at the State Department. He had now got to considering the Massachusetts Senator unfair and inaccurate; and from this time the chairman of the Senate Committee on Foreign Affairs ceased to be a direct factor in the negotiation with Great Britain.

Thus far, in pursuance of the policy dimly outlined in the executive session debate on the Johnson-Clarendon convention, the two questions of a settlement of claims and Canadian independence had been kept closely associated. They were now to be separated. Yet the change was gradual; for Mr. Sumner's policy had a strong hold on the minds of both President and Secretary. Even as late as September, 1870, only five months before the Treaty of Washington was negotiated, Secretary Fish and Sir Edward Thornton had another conversation on the subject of Canadian independence. It originated in one of the endless squabbles over the Fisheries. The Secretary intimated his belief that the solution of that question would be found in a separation of the Dominion from the Mother Country. Thereupon Mr. Thornton repeated what he had, he declared, often said before,—that Great Britain was willing, and even anxious, to have the

Colonies become independent; but could do nothing to force independence on them. He then added —“ It is impossible to connect the question of Canadian independence with the Alabama claims; not even to the extent of providing for the reference of the question of independence to a popular vote of the people of the Dominion. Independence,” he added, “ means annexation. They are one and the same thing.” This conversation, it will be observed, took place on the very day the investment of Paris by the victorious German army was pronounced complete. In the existing European situation everything was possible, anything might be anticipated.

Though his resignation had been requested, Mr. Motley still remained in London. His early removal was contemplated by the President, and the question of who should be sent out to replace him was under consideration. The place was offered to O. P. Morton, then a Senator from Indiana. Wholly the President's, the selection was the reverse of happy. Governor Morton was inclined to accept; but he desired first to know whether he would, as Minister, have the *Alabama* claims settlement entrusted to him. The President then talked the matter over with Secretary Fish, and what he said showed clearly the hold which Sumner's views had on him. He proposed that the new Minister should attempt a negotiation based on the following concessions by Great Britain: (1) the payment of actual losses incurred through the depredations of British Confederate commerce-destroyers; (2) a satisfactory revision of the principles of international law as between the two governments; and (3) the sub-

mission to the voters of the Dominion of the question of independence. In commenting immediately afterwards on this conversation, Mr. Fish wrote—"The President evidently expects these Provinces to be annexed to the United States during his administration. I hope that it may be so. That such is their eventual destiny, I do not doubt; but whether so soon as the President expects may be a question." Owing to the result of an election in Indiana held shortly after this time, it was deemed inexpedient for Gov. Morton to vacate his seat in the Senate. He consequently declined further to consider a diplomatic appointment. Though in no way germane to the subject of this paper, it is interesting to know that it was to fill the vacancy thus existing that Gen. Butler shortly after brought forward the name of Wendell Phillips. The President, Mr. Fish noted, "very evidently will not consider him within the range of possibilities of appointment."

The pressure for some settlement now brought to bear on the British government was day by day becoming greater. Late in November the Russian minister took occasion to suggest to Secretary Fish that the present time,—that of the Franco-Prussian war,—was most opportune to press on Great Britain an immediate settlement of the *Alabama* claims. Two weeks later the message of the President was sent to Congress, with the significant paragraph already quoted. In his next talk with the British minister, Secretary Fish alluded to the suggestion made to him by the Russian minister, and Sir Edward Thornton, in return, frankly asked him what the United States wanted. And now at last the negotiation took a new and

final turn. The Secretary, dropping Canada from the discussion, asked merely an expression of regret on the part of Great Britain, an acceptable declaration of principles of international law, and payment of claims. This conversation took place on the 20th of November; nineteen days later, on the 9th of December, at a cabinet meeting held that day, Secretary Fish read in confidence a private letter to him from Sir John Rose "intimating that the British cabinet is disposed to enter on negotiations." It would thus appear that the obstacle in the way of a renewed negotiation had been the purpose of the United States to combine in some way a settlement of money claims private and national, with a movement looking to the withdrawal of the British flag, in whole or part, from the North American continent. The moment this purpose was withdrawn, the British cabinet lost no time in signifying its readiness to negotiate. None the less, the whole scheme of Mr. Sumner, underlying his famous speech of May 17, 1869, and the appointment of Mr. Motley to the English mission, was thereby and thenceforth definitely abandoned. In his memorandum, therefore, he demanded nothing new; he merely, stating the case in its widest form, insisted upon adherence to a familiar policy long before formulated.

VI

The narrative now returns to the point when Mr. Sumner's memorandum of January 17th reached Mr. Fish. Whatever may have been the Secretary's sensations when he finished the perusal of that remarkable paper, one thing must at once have

been apparent to him ; by it the situation was simplified. The natural,—indeed the only inference to be drawn from the memorandum,—was that the chairman of the Senate Committee on Foreign Affairs intended to put an immediate stop to the proposed negotiation, if in his power so to do. The considerations influencing him were obvious. The course of procedure now suggested was wholly at variance with the policy outlined by him. In June, 1869, he had written to Mr. Motley :—"I should make no claim or demand for the present" ; and to Caleb Cushing a month later—"Our case, in length and breadth, with all details, should be stated to England without any demand of any kind." And now, in January, 1871, he did not regard the conditions of a successful and satisfactory settlement with Great Britain, on the basis he had in view, as being any more propitious than in June, 1869. Eighteen months only had elapsed. The fruit was not yet ripe ;—then why shake the tree ? That "international debate, the greatest of our history, and before it is finished, in all probability the greatest of all history," seemed drawing to a lame and impotent, because premature, conclusion. His memorandum was, therefore, an attempt at a check-mate. By formulating demands which he knew would not be entertained, he hoped to bring the proposed negotiation to an abrupt close. The country would then await some more convenient occasion, when, Great Britain being entirely willing, a mild compulsion in favor of independence could be brought to bear upon her American dependencies. On the other hand, the issue presented in this memorandum was clear and not to be evaded :

—Was the Executive to shape the foreign policy of the United States ; or was it to receive its inspiration from the room of the Senate Committee on Foreign Relations? Either that committee must be brought into line with the State Department, or the Secretary of State should accept his position as a chairman's clerk.

A delicate question between the executive and legislative departments of the government, — a question as old as the Constitution, was thus involved. What Constituted an attempt at improper interference by one department with the functions and organization of the other? It is obvious that, in a representative government under the party system, where both the legislative and the executive departments are controlled by the same party organization, the legislative committees should be so organized as to act in accord with the responsible executive. It is a purely practical question. The executive cannot, of course, directly interfere in the organization of the legislative body ; but it has a perfect right to demand of its friends and supporters in the legislative bodies that those having charge through committees of the business of those bodies should be in virtual harmony with the administration. Certainly, they should not be in avowed hostility to it. Indeed, under any proper construction of functions, those finding themselves in virtual opposition should in such cases decline committee appointments necessarily placing them in a position where they feel under compulsion to thwart and hamper the measures of the party of which they nominally are members. Such should, in parliamentary parlance, take their places below

the gangway. In the winter of 1870-1 Mr. Sumner was in that position. Chairman of the Senate Committee on Foreign Relations, he was notoriously in proclaimed opposition on cardinal features of foreign policy. Such being the case, in view of the executive functions of the Senate, it is at least an open question whether he should not have voluntarily declined longer to serve as chairman of the committee having foreign matters in its charge. His serving was clearly an obstruction to the Administration; while it would be perfectly possible for him to exert his influence in the Senate and committee-room without being the official head, entrusted as such with the care of measures on the defeat of which he was intent. The practice, under our government, is the other way. Senatorial courtesy and seniority, it is well known, prevail; and Secretaries must govern themselves accordingly. Nevertheless, in the case of Mr. Sumner and his chairmanship in 1870-1 this practice was carried to its extreme limit. Having been active in opposition to one measure of foreign policy by which the President set great store, he declared himself in advance opposed to another measure of yet greater moment. A wholly impossible preliminary condition to the proposed measure must, he declared, be insisted upon,—or, to use his own language, “cannot be abandoned.”

In January, 1871, the Forty-first Congress was fast drawing to its close. Chosen at the election which made Grant President for the first time, that Congress was overwhelmingly Republican; so much so that, of seventy-two Senators admitted to seats, sixty-one were supporters of the Administra-

tion. And yet, in a body thus made up,—a body in which the opposition numbered but eleven members,—scarcely one in six,—a treaty in behalf of the approval of which the President had exerted all his influence, personal and official, had failed to secure even a majority vote. The chairman of the Committee on Foreign Relations, regardless of the private personal solicitation of the chief Executive wholly unprecedented in character, had been not only unrelenting but successful in his opposition. President Grant was essentially a soldier; as such he looked at all things from the military point of view. He consequently regarded this action on the part of a Senator at the head of the Committee on Foreign Relations as, during the War, he would have regarded the action of a Department Commander who refused to co-operate in the plan of general campaign laid down from head-quarters, and exerted himself to cause an operation to fail. Such a subordinate should be summarily relieved. He seems actually to have chafed under his inability to take this course with the chairman of a Senate committee; and so he relieved his feelings at the expense of the friend of the chairman, the minister to England, who was within his power. Him he incontinently dismissed; exactly as, under any similar circumstances, he would have dealt with some general in subordinate command.

But Grant, General as well as President, was not satisfied with this. His instinct for discipline, as well as his feelings, had been outraged, and he was intent on the real offender,—the Senator from Massachusetts. He had also a quick eye for strategic situations, and he seems at once to have grasped

the opportunity now offered him: and it hence followed that, when Secretary Fish, with Mr. Sumner's memorandum in his hand, went to Grant for instructions, the President's views as to the independence and annexation of Canada at once underwent a change. As he welcomed an issue with his much-disliked antagonist upon which he felt assured of victory, hemispheric flag-withdrawals ceased to interest him. A great possible obstruction in the path of the proposed negotiation was thus suddenly removed. The General-President promptly instructed the Secretary to go to Sir John Rose, and advise him that the Administration was prepared to accept the proposal for a commission to settle all questions between the countries. That was, however, a preliminary move only. By it the Administration was committed to action of great import. A crucial case was presented; one on which no unnecessary risk would be incurred. The next, and really vital step remained to be taken.

When the first Congress of Grant's earlier administration met in its second session at the usual date in December, 1870, an attempt was made foreshadowing what occurred four months later. A partial reorganization of the Senate Committee on Foreign Affairs was discussed, with a view to the introduction into that committee of some element less under its chairman's influence, and more docile to the Executive. A place on the committee was to be found for Roscoe Conkling, of New York. If possible, Mr. Conkling was to be substituted for Mr. Sumner; but if Mr. Sumner was found too firmly fixed, Mr. Schurz was to be replaced as a member of the committee; or, as a final resort,

Mr. Patterson, of New Hampshire, if Mr. Schurz also proved immovable. The last change was finally decided upon; but, when the committee as thus altered was reported in caucus, Sumner objected. Senatorial courtesy then prevailing, the scheme was for the time being abandoned. Charles Sumner was, however, yet to learn that, in civil as in military life, Ulysses S. Grant was a very persistent man.

Two weeks later Mr. Sumner did what he had hitherto refrained from doing. Up to this time he had expressed himself with characteristic freedom, denouncing the President in conversation and in letter,* but he had not opposed him in debate. He now openly broke ground against him in a carefully prepared speech on the Dominican question. In the position he took he was probably right. He would certainly be deemed so in the light of the views then generally taken of the world-mission of the United States; but that was during the country's earlier period, and before the universality of its mission was so plainly disclosed as it now is. Whether correct, however, in his position or not, his manner and language were characteristic, and unfortunate. The question on both sides had become personal; the feeling uncontrollable: and, throughout his career,—early and late,—Mr. Sumner did not appreciate the significance of words. He failed to appreciate them in the speech now made, entitled by him "Naboth's Vineyard," wherein he accused the President of seeking surreptitiously to commit the country to a "dance of blood." On the 9th of January, less than three weeks after this outbreak, the papers relating to the recall of

* Pierce's *Sumner*, vol. iv, pp. 448, 454.

Mr. Motley were, by order of the President, sent to the Senate. This was on a Monday ; and it was on the following Sunday evening that Mr. Fish called on Mr. Sumner by arrangement, with the Sir John Rose memorandum. The climax was then at hand. Among the papers relating to the removal of Mr. Motley was one in which the Secretary had referred to some unnamed party as being "bitterly, personally and vindictively hostile" to the President ; while in another passage he had spoken of the President as a man than whom none "would look with more scorn and contempt upon one who uses the words and the assurances of friendship to cover a secret and determined purpose of hostility."

The allusion was unmistakably to Sumner. It was so accepted by him. The Motley papers were laid before the Senate on the very Monday upon which Sir John Rose reached Washington. The succeeding Tuesday, the eighth day after the transmission of those papers, the memorandum of Mr. Sumner of January 17th reached the Secretary. The break between the two officials was complete ; they were no longer on speaking terms.

January was now more than half over, and, in six weeks' time, the Forty-first Congress was to pass out of existence. When, on the 4th of March, the new Congress came into being, the committees of the Senate would have to be reappointed, and, of necessity, largely remodelled, nineteen newly elected members of the body replacing a similar number whose terms had expired. Mr. Sumner's deposition from the chairmanship he would then have filled through five successive Congresses had meanwhile become a fixed idea in the presidential mind ; and

Secretary Fish shaped his course accordingly. On the 24th of January he again met Sir John Rose. A week had intervened since the receipt of Mr. Sumner's memorandum, and during that week the Secretary had been holding consultations with Mr. Sumner's committee colleagues ; of course, absolutely ignoring that gentleman. While so doing he had carefully informed himself as to the attitude of the Democratic minority in the Senate, now increased to seventeen in a body numbering in all seventy-four. Mr. Bayard and Mr. Thurman were the recognized leaders of the opposition ; and, from both, he received assurances of support. Upon the other side of the chamber, the Administration Senators could, of course, be counted upon ; and through their leaders, Messrs. Conkling and Edmunds, it was well known that they were ripe for revolt against the Sumner committee-régime.

Though personally highly respected, Mr. Sumner was not a favorite among his colleagues. In many respects a man of engaging personality ; kind, sympathetic and considerate, essentially refined and easy of approach, Mr. Sumner could not brook any sustained opposition. Recognizing superiority in no one, he was restive in presence of any assertion of equality. The savor of incense was sweet in his nostrils ; and, while he did not exact deference, habitual deference was essential to his good-will. Among his colleagues, especially those not politically opposed but more or less lacking in sympathy, his unconsciously overbearing habit, implacable temper and intemperate expression necessarily made him enemies. The terms seem strong, and yet they are not so strong as those used of him at the

time by men of his own age, and friends of years' standing. One instance will suffice. "Sumner," wrote R. H. Dana not long before, "has been acting like a madman * * * in the positions he took, the arguments he advanced, and the language he used to the twenty out of twenty-five Republican Senators who differed from him. If I could hear that he was out of his head from opium or even New England rum, not indicating a habit, I should be relieved. Mason, Davis and Slidell were never so insolent and overbearing as he was, and his arguments, his answers of questions, were boyish or crazy, I don't know which." Again in June, 1861, the same excellent authority describes, in the familiarity of private correspondence, the Senator as coming from Washington "full of denunciation of Mr. Seward. * * * He gave me some anxiety, as I listened to him, lest he was in a heated state of brain. He cannot talk five minutes without bringing in Mr. Seward, and always in bitter terms of denunciation. * * * His mission is to expose and denounce Mr. Seward, and into that mission he puts all his usual intellectual and moral energy." Two years later Mr. Dana was in Washington. In the interim he, an old personal as well as political friend, had ventured to question the Senator's policy. He now, as was his wont, at once called on Mr. Sumner, leaving his card. The call was not returned, nor did Mr. Dana hear anything from Mr. Sumner during the succeeding twenty days while in Washington, or see him, except once when, by chance, they encountered each other at a friend's house. All this was characteristic of the man. With him, difference of opinion savored strongly of moral

delinquency. To any question in which he was deeply concerned there was but one side.* As it was his mission to denounce Seward in 1861, ten years later it was his mission to denounce Grant; and he fulfilled it. As he "gave the cold shoulder" to Dana in 1863, so he gave it to Fish in 1871.† Consequently, in 1871, more than half the body of which he was in consecutive service the senior member were watching for a chance to humiliate him.

So, at his next meeting with Sir John Rose on the 24th of January,—a meeting which took place at the Secretary's house, and not at the State Department,—Mr. Fish began by quietly, but in confidence, handing Sir John the Sumner hemispheric flag-withdrawal memorandum. Sir John read it; and, having done so, returned it, without comment. Mr. Fish then informed him that, after full consideration, the government had determined to enter on the proposed negotiation; and, should Great Britain decide to send out special envoys to treat on the basis agreed upon, the Administration would spare no effort "to secure a favorable result, even if it involved a conflict with the chairman of the Committee on Foreign Relations in the Senate." ‡

The die was cast. So far as the chairman of the Senate Committee on Foreign Relations was concerned, the man of Donelson, of Vicksburg and of Appomattox now had his eye coldly fixed upon him. As to the settlement with Great Britain, it was to be

* Eulogy of Geo. William Curtis, *Boston Memorial of Charles Sumner*, p. 148.

† Pierce, vol. iv, p. 468; Adams, *R. H. Dana*, vol. ii, p. 265.

‡ Moore, *International Arbitrations*, i, 520.

effected on business principles, and according to precedent; "national" claims and hemispheric flag-withdrawals were at this point summarily dismissed from consideration.

The purport of the last interview between Mr. Fish and Sir John Rose was immediately cabled by the latter to London; and, during the week that ensued, the submarine wires were busy. The Gladstone ministry, thoroughly educated by fast-passing continental events,—France prostrate and Germany defiant,—was now, heart and soul, intent on extricating Great Britain from the position in which it had, ten years before, put itself under a previous administration of which Mr. Gladstone had been a prominent, as well as an active and an influential, member. Before the seven days had expired an agreement was reached; and, on the first of February, Sir Edward Thornton notified Secretary Fish of the readiness of his government to send a special mission to Washington empowered to treat on all questions at issue between the two countries. The papers were duly submitted to Congress, and, on the 9th of February, President Grant sent to the Senate the names of five persons, designated as commissioners to represent the United States in the proposed negotiation. The nominations were promptly confirmed. The question was now a practical one:—Would Great Britain humble its pride so far as to avail itself of the chance of extrication thus opened?—and, if it did humble its pride to that extent, could the administration of President Grant so shape the negotiation as to get the United States out of the position in which Mr. Sumner had partially succeeded in putting it? His more than possible op-

position to any settlement at that time had to be reckoned with ; if necessary, overborne.

For present purposes, it is needless to enter into the details of the negotiation which ensued. If not familiar history, I certainly have no new light to throw on it. Under the skilful business guidance of Mr. Fish, the settlement moved quietly and rapidly to its foreordained conclusion. It is, however, still curious to study, between the lines of the record, the extent to which the Sumner memorandum influenced results, and how it in the end only just failed to accomplish its author's purpose. It rested among Mr. Fish's private papers, a bit of diplomatic dynamite the existence of which was known to few, and mentioned by no one. Not a single allusion is to be found to it in the debates, the controversies or the correspondence of the time. Yet there can be little doubt that its presence contributed sensibly to that strong presentation of national injuries, indirect claims, and consequential damages which, in the following autumn, startled Great Britain from its propriety, and brought the treaty to the verge of rejection. Had it led to that result, the possible consequences might now, did space permit, be interesting to consider ; but such a result, whether an advantage or otherwise to the world-at-large, would have been a singular tribute to the influence of Charles Sumner. In all human probability, also, a calamity to Great Britain.

But to return to the narrative. Gen. Grant was now handling a campaign. He did it in characteristic fashion. His opponent and his objective were to him clear, and he shaped his plan of operations accordingly. So rapidly did events move, so ready

ripe for action were all concerned, that the Joint High Commission, as it was called, organized in Washington on the 27th of February, exactly seven weeks from the arrival there of Sir John Rose. On the 8th of the following May the treaty was signed; and, on the 10th, the President sent it to the Senate. It was at once referred to the Committee on Foreign Relations. Mr. Sumner was, however, no longer chairman of that committee. On the 8th of March,—two months before,—the negotiators were struggling with the vexed question of indirect claims, Mr. Sumner's special senatorial thunder; and, on the day following, at a Senate Republican caucus then held, he was deposed. As the story has been told in all possible detail, it is needless here to describe what then occurred. The step taken was one almost without precedent, and there is every reason to conclude that it had been decided upon in the private councils of the White House quite irrespective of the fate of any possible treaty which might result from the negotiations then in progress. However that may be, its complete justification can be found in facts now known in connection with that negotiation. Upon certain points there is no longer room for controversy. As already pointed out, in the conduct of the foreign policy of the country, the chairman of the Senate Committee on Foreign Relations was, and is, of necessity a part of the Administration. In March, 1870, a settlement with Great Britain had become a cardinal feature,—it might be said *the* cardinal feature, in the foreign policy of the Administration, as represented by its official organ, the State Department. With the head of that Department the chairman of the Sen-

ate Committee on Foreign Affairs was no longer upon speaking terms ; while, in private, his denunciation of him and of the President was loud and limitless. That chairman had, moreover, been consulted as to the negotiation before it was initiated, and, in reply, had signified his opinion that "the withdrawal of the British flag from this hemisphere, including provinces and islands, cannot be abandoned as a condition, or preliminary of settlement." With the Senate fate of the Johnson-Clarendon convention fresh in memory, this memorandum of the chairman of the committee Mr. Fish had privately communicated to the confidential agent of the British government. So doing was on his part right and proper. After its experience over the Johnson-Clarendon convention, that government of right ought to be,—indeed, had to be,—advised of this danger before being invited to enter upon a negotiation which might result in another mortifying rebuff. In making this unofficial communication the Secretary had intimated to the agent that, should Great Britain still decide to proceed with the negotiations, the Administration would spare no effort to secure a favorable result "even if it involved a conflict" with Mr. Sumner. To any one who knew the President and his methods, mental and military, this admitted of no misinterpretation. Unquestionably, the contents of Mr. Sumner's memorandum were well known to every one of the British plenipotentiaries, as also was the committal of the Administration in connection therewith. Under these circumstances the course now pursued was more than justifiable ; it was necessary, as well as right. For the Adminis-

tration, in face of the notice thus given, to have permitted the continuance of Mr. Sumner in his chairmanship, if to prevent was in its power, would have been worse than childish ; it would have distinctly savored of bad faith: and neither Gen. Grant nor Mr. Fish were ever chargeable with bad faith, any more than the record of the former was indicative of a proneness to indecisive or childish courses of procedure.

On the 9th of March, therefore, in accordance with the understood wishes of the Executive, Mr. Sumner was deposed by his senatorial colleagues from the chairmanship of the Senate Committee on Foreign Relations. Still, when, on the 24th of May the treaty was reported back to the Senate by the committee as now organized, with a favorable recommendation, the question of interest was as to the course Mr. Sumner would pursue. Would he acquiesce? It was well understood that on all matters of foreign policy the Senate, if only from long habit, gave a more than attentive ear to his utterances. Almost daily, after the treaty was transmitted to the Senate and until it was reported back from committee, intimations from this person and from that,—callers on Mr. Sumner or guests at his table,—reached the Department of State, indicating what the deposed chairman proposed to do, or not to do. One day Judge Hoar, now serving as one of the Joint High Commissioners, would announce that Mr. Sumner had declared himself the evening before in favor of the treaty, and was preparing a speech accordingly ; on the evening of the same day another gentleman came directly to Mr. Fish from Mr. Sumner's table to say that his host had just been criticising the treaty, and proposed

to urge amendments to it. The British commissioners were especially solicitous. They even went so far as to ignore their instructions to leave Washington as soon as possible after the treaty was signed. The Administration wished them to remain there, as one of the Englishmen wrote, on the ground that they might be able to influence "particular Senators, such as the Democrats and (still more) Sumner, over whom [the Administration has] no party control." Sir Stafford Northcote then goes on to say of Mr. Sumner—"We have paid him a great deal of attention since he has been deposed, and I think he is much pleased at being still recognized as a power." Sir Stafford might well say that they had paid him a great deal of attention. Mr. Sumner's egotism and love of flattery were tolerably well understood; and the Englishmen, realizing that he was "very anxious to stand well with England," humored him to the top of his bent. Lord de Grey, for instance, presently to be made Marquis of Ripon, the head of the British side of the commission, went out of his way to inform the deposed chairman that, without his speech on the Johnson-Clarendon convention, "the treaty could not have been made, and that he [Lord de Grey] worked by it as a chart." Nor were the American commissioners less solicitous; though they went about it in a more quiet way. For, hardly was the ink of the signatures to the treaty dry before Judge Hoar called at Mr. Sumner's door with a copy, which he commended to the Senator's favorable consideration "as meeting on all substantial points the objections he had so well urged against the Johnson-Clarendon convention."

That Mr. Sumner, had he, on consideration, concluded that it was his duty to oppose the confirmation of the treaty, could, placed as he now was, have secured its rejection, is not probable. As chairman of the Committee on Foreign Relations it would almost unquestionably have been in his power so to do; not directly, perhaps, but through the adoption of plausible amendments. This course Mr. Fish apprehended. On the 18th of May, Mr. Trumbull, then Senator from Illinois, and deservedly influential, called at the Department to inquire whether an amendment would jeopardize the treaty. In reply he was assured that any amendment, however trivial, would, in all probability, destroy the treaty, as it would enable Great Britain either to withdraw entirely, or, in any event, to propose counter amendments. In point of fact, Mr. Sumner, while advocating approval, did offer amendments; but, no longer chairman of the committee, he was shorn of his strength. Up to the time of voting, he was enigmatical. He would intimate a sense of great responsibility, inasmuch as he realized the extent to which the country was looking to him for guidance; and he would then suggest doubts. His mind was not clear, &c., &c. On the direct issue of approval the solid phalanx of Administration Senators would unquestionably have been arrayed against him; and, on the Democratic side of the chamber, he was far from popular. None the less it would have been in his power, playing on the strong Irish element and the anti-English feeling then very rife, to have made much trouble. The treaty bears distinct marks of having been framed with all this in view. In its provisions, not only did he find the

ground in great degree cut away from under him, but he could not help realizing that, in view of his speech on the Johnson-Clarendon convention, he stood to a certain extent committed. It was not open for him to take the hemispheric flag-withdrawal attitude. So doing was impossible. He had not taken it before ; and, though his reasons for not taking it were obvious, to take it now would, under the circumstances, inevitably expose him to ridicule. He was in thus far fairly and plainly circumvented.

But, more and most of all Charles Sumner was, be it ever said, no demagogue. Somewhat of a doctrinaire and more of an agitator, he was still in his way an enlightened statesman, with aspirations for America and mankind not less generous than fervid. His egoism was apparent ; nor has his rhetoric stood the test of time. A hearty hater, and unsparing of denunciation, he hated and denounced on public grounds only ; but his standards were invariably high, and he was ever actuated by a strong sense of obligation. His course now was creditable. In his belief an unsurpassed opportunity had been lost. A rejection of the proposed adjustment, manifestly fair so far as it went, could, however, result only in keeping alive a source of acute irritation between two great nations. That involved a heavy responsibility ; a responsibility not in Mr. Sumner's nature to assume. Accordingly, he accepted the inevitable ; and he accepted it not ungracefully. Gen. Grant numbered him, with Buckner, Pemberton, Johnston, Bragg and Lee among his vanquished opponents. As to Mr. Fish, the two were never afterwards reconciled ; but the Secretary now had his way.

Into the subsequent difficulties encountered by Secretary Fish in his work of saving Great Britain in spite of Great Britain's self, it is needless to enter. Suffice it to say they can all be traced back to the positions assumed by Mr. Sumner in April, 1869. As already pointed out, it was obviously from an over-desire to forestall Mr. Sumner that Secretary Fish's assistant, Mr. Bancroft Davis, a little later jeopardized the whole treaty by the extreme grounds taken on the subject of national injuries, indirect claims and consequential damages, and the somewhat intemperate way in which the same were urged. With Mr. Sumner's historic indictment of the Johnson-Clarendon convention fresh in memory, the full record of grievance had to be set forth, or the American people might resent a tacit abandonment of what they had been taught to regard as their just demands. With an eye to this possibility,—Sumner always in mind,—Mr. Fish had at an early stage of the negotiations significantly intimated to his colleagues that "he supposed it was pretty well agreed that there were some claims which would not be allowed by the arbitrators, but he thought it best to have them passed upon." * So, in avoiding the senatorial Sylla, Mr. Bancroft Davis subsequently brought the ark of settlement squarely up against the British Charybdis. Six years later, when both Mr. Sumner and Mr. Motley were dead,† General Grant made contemptuous reference to the "indirect damage humbug," as he then phrased it; and, as set forth in the American "case" presented at

* Davis, *Mr. Fish and the Treaty of Washington*, p. 77.

† In an interview at Edinburgh, published in the *New York Herald* of September 25, 1877.

Geneva, it was a "humbug,"—a by no means creditable "humbug." As such it had by some means to be got rid of; and at Geneva it was, with general acceptance, so got rid of. Be it always, however, remembered, the vulgarized bill then presented was not the sublimated balance-sheet Charles Sumner had in mind. His was no debit-and-credit account, reduced to dollars and cents, and so entered in an itemized judgment; nor was this better understood by any one than by President Grant. It is but fair to assume that, in the rapid passage of events between 1870 and 1877, the facts now disclosed had been by him forgotten.

In Wemyss Reid's *Life of William E. Forster* is a chapter devoted to this subject. I think it may not unfairly be said that Mr. Forster now saved the treaty. In the first outburst of indignation over the resurrection in the American "case" of Sumner's self-evolved equities and incalculable claims, a special meeting of the British cabinet was summoned, at which a portion of the members were for withdrawing forthwith from the arbitration. Though he himself, unadvised as to the real motive for so emphasizing the demand on account of national injuries, held the whole thing to be a case of "sharp practice," yet Mr. Forster counselled a moderate and prudent course,—as he put it, "a cool head and a cool temper needed"; adding, "I never felt any matter so serious." He then drew up a special memorandum for the use of his colleagues, looking to such action as would be most likely to leave open the way to an understanding. Upon this all the ministers, save four, were against him. Mr. Forster next met Mr. Adams, then passing through London on his way home

from the preliminary meeting of the tribunal of arbitration at Geneva, he being a member of it; and Mr. Adams fairly told him that, for Great Britain, it was a case of now or never. If, Mr. Adams said, Great Britain insisted on the absolute exclusion of the indirect claims, America must withdraw; and, if it did, "the arbitration was at an end, and America would never make another treaty."

During those anxious weeks the British cabinet was the scene of more than one heated discussion, and so severe was the tension that the very existence of the Ministry was threatened. On the afternoon of April 24th, Forster intimated to General Schenck, the American Minister, that, unless something was done, he and the Marquis of Ripon "could not keep the treaty alive." Mr. Adams was now once more in London on his way to Geneva, and Mr. Forster again saw him, receiving the assurance that "Fish and the President had the Senate well in hand"; yet, this notwithstanding, when an article supplemental to the treaty, obviating the cause of trouble, was agreed on and submitted to the Senate, that body so amended it before ratification that the English government professed itself unable to concur. It seemed as if the last chance of a pacific settlement was about to vanish.

On the 15th of June the Court of Arbitration met at Geneva, pursuant to adjournment. Everything was in the air. At Geneva, however, the policy of the State Department was understood; and, entrusted to experienced hands, it was, at the proper time, skilfully forwarded. A way out of the last, and most serious of all the dangers which imperilled the settlement was thus devised, and the arbitration

moved on thenceforth upon common-sense business lines to a practical result.

Times change, and with them the estimate in which nations hold issues. Recollecting the levity, at times marked by more than a trace of sarcasm and petulance, with which the British Foreign Secretary had received our earliest reclamations because of injuries inflicted on our mercantile marine by British-built commerce-destroyers, I cannot refrain, before closing, from a few words descriptive of the very different mood in which the Ministry then in power awaited tidings of the final results reached at Geneva. It was the 15th of June, 1872. The treaty was in question. The Court of Arbitration met at Geneva at noon ; in London, at the same hour, a meeting of the cabinet was in session,—a meeting almost unique in character. The members waited anxiously for tidings. For two hours they attended listlessly to routine Parliamentary work ; and then took a recess. When, at 3 o'clock, the time for re-assembling came, no advices had been received. Thereupon, a further adjournment was taken until 5:30. Still no telegram. All subjects of conversation being now exhausted, the members sat about, or faced each other in silence. It was a curious situation for a ministry. Had England humiliated herself by an expression of fruitless regret ? Those present contemplated the situation in the true Parliamentary spirit. “ The opposition would snigger if they saw us,” remarked one ; and the speaker soon after sent for a chess-board, and he and Mr. Forster took chairs out on the terrace in front of the cabinet-room, and there sat down to a game, using one of

the chairs as a table. Three games were played; but still no tidings. So the company dispersed for dinner. As the Tribunal adjourned over until Monday, no tidings came that night; the method of procedure had, however, been arranged, and Mr. Fish communicated with. His assent to what was proposed came immediately; and meanwhile Mr. Forster was bestirring himself in London to "urge help to Adams," and a "short, helpful telegram" was forwarded. "After all," wrote Mr. Forster that night, "this treaty, which has as many lives as a cat, will live." The next afternoon this staunch friend of America and of peace scribbled, from his seat in the ministerial benches, this note to his wife:—"Hip, hip, hip, hooray! the final settlement of the indirect claims came during questions to-day, and Gladstone announced it amid great cheers on our side and the disgust of the Tories. This is a good year now, whatever happens." It was the 19th of June, 1872,—one month over eleven years since the issuance of the famous proclamation. A heavy shadow was lifted from off the future of the British Empire. That it was thus lifted must in all historical truth be ascribed to Hamilton Fish.

In discussing the developments of history, it is almost never worth while to waste time and ingenuity in philosophizing over what might have been. The course of past events was—as it was! What the course of subsequent events would, or might have been, had things at some crucial juncture gone otherwise than as they actually did go, no one can more than guess. Historical consequences are not less strange than remote. For instance, the lessons

of our own War of Independence, closed six score years ago, are to-day manifestly influencing the attitude and action of Great Britain throughout her system of dependencies. Should the system ever, as now proposed, assume a true federated form, that result, it may safely be asserted, will be largely due to the experience gained a century and a quarter ago on the North American continent, supplemented by that now being gained in South Africa. In view of the enormous strides made by science during the last third of a century it cannot be assumed that, as respects warfare on land or on sea, what was possible in 1863 would be possible now. The entire globe was not then interlaced with electric wires, and it may well be that another *Alabama* is as much out of the range of future probabilities as a ship flying the black flag, with its skull and crossed bones, was outside of those of 1861. This, however, aside, it is instructive, as well as interesting, to summarize the record which has now been recalled, and to consider the position in which Great Britain would to-day find itself but for the settlement effected and principles established by means of the Treaty of Washington.

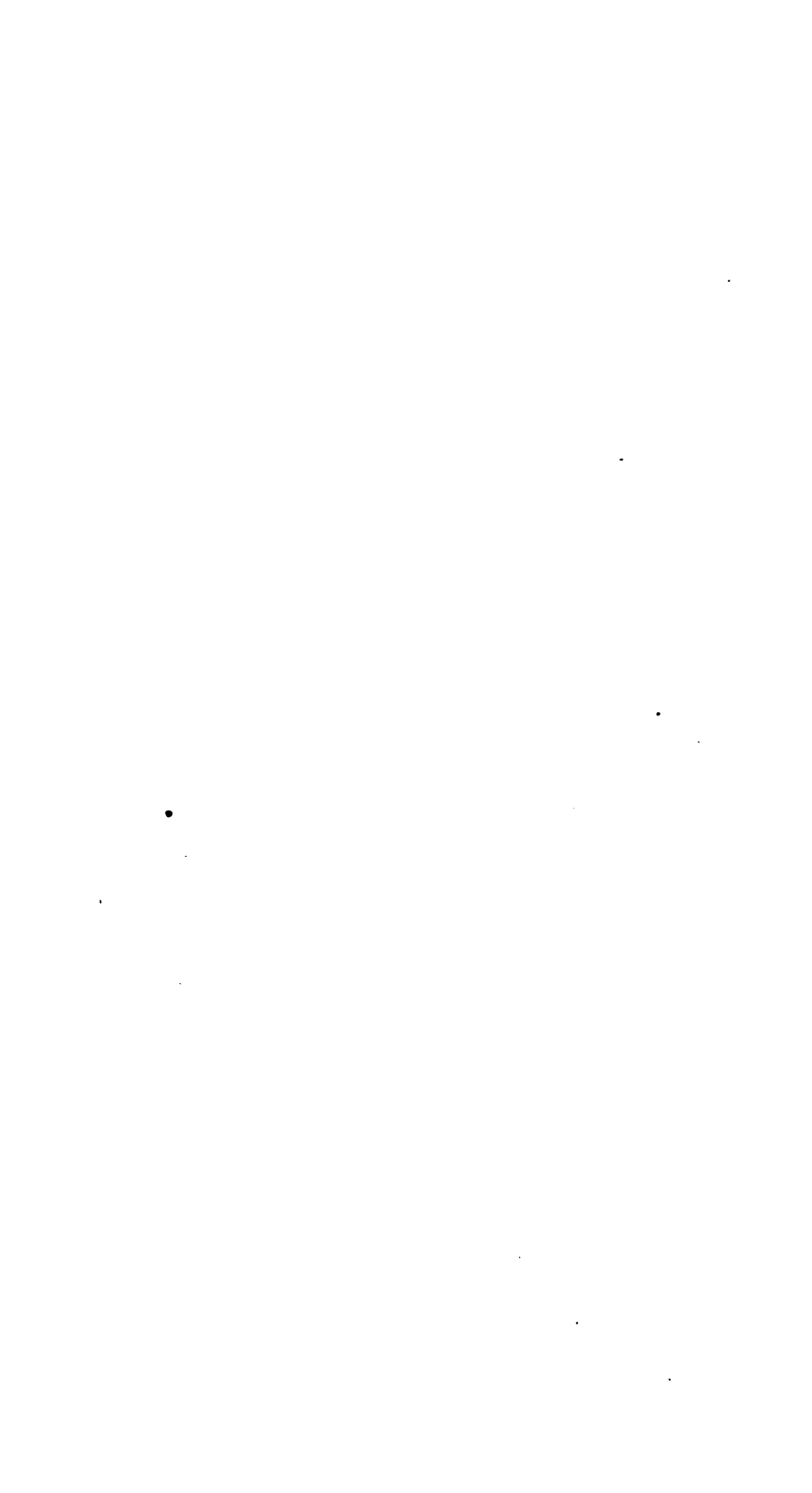
So far as the international situation is concerned, the analogy is perfect. Every rule of guidance applicable in our Civil war of 1861-65 is *a fortiori* applicable in the South African war of 1899-1902. The contention of Great Britain from 1861 to 1865 was that every neutral nation is the final judge of its own international obligations; and that, in her own case, no liability, moral or material, because of a violation of those obligations was incurred, no matter how scandalous the evasion might subse-

quently prove to have been, unless the legal advisers of the government pronounced the ascertainable evidence of an intention to violate the law sufficient to sustain a criminal indictment. In view of the "lucrative" character of British ship-building, it was further maintained that any closer supervision of that industry, and the exercise of "due diligence" in restraint of the construction of commerce-destroyers, would impose on neutrals a "most burdensome, and, indeed, most dangerous" liability. Finally, under the official construction of British municipal law,—a law pronounced by Her Majesty's government adequate to any emergency,—"it was unnecessary for a naval belligerent to have either a port or a sea-shore." The South African republics, for instance, "might unite together, and become a great naval power," using the ports of the United States as a base for their maritime operations. "Money only was required for the purpose." Then came the admission of Sir Edward Thornton that, in case Great Britain were engaged in war, retaliations in kind for the *Alabama* and the *Florida* would naturally be in order; commerce-destroyers would be fitted out on the Pacific coast as well as the Atlantic, in spite of all the United States government might, or could, do to prevent them; and, with them, the high seas would swarm. War must follow; and then Canada was "a source of weakness." On land and on sea Great Britain was equally vulnerable.

From such a slough of despond was Great Britain extricated by the Treaty of Washington. That much is plain; all else is conjecture. But it is still curious to consider what might well have now re-

sulted had the United States, between 1869 and 1871 definitely for its guidance adopted the policy contemplated by Charles Sumner instead of that devised by Hamilton Fish, and had then persistently adhered to it. In the hands and under the direction of Mr. Sumner, the method he proposed to pursue to the end he had in mind might have proved both effective and, in the close, beneficent. So long as all things are possible—Who can say? But Mr. Sumner died in 1874; and with him must have died the policy he purposed to inaugurate. Characteristically visionary, he was wrong in his estimate of conditions. He in no wise foresaw that backward swing of opinion's pendulum, from the "wretched colonies" estimate of 1870 to the *Imperium et Libertas* conceptions of 1900. Mr. Fish, on the other hand, less imaginative, was more nearly right. He effected a practical settlement; and, in so doing, he accomplished a large result. For to-day it is apparent to all who carefully observe that, as the direct outcome of the American Civil War, the world made a long stride in advance. It is a great mistake to speak of the *Florida*, the *Alabama* and the *Shenandoah* as "privateers." They were not. No "privateer," in the proper acceptance of the word, ever sailed the ocean under the Confederate flag; the commerce-destroyers of that conflict, whether fitted out on the Mersey and Clyde, or in home ports, were, one and all, government ships-of-war, owned and regularly commissioned by the belligerent whose flag they flew, and commanded by its officers. Their single mission was, none the less, to burn, sink and destroy private property on the high seas. They were engaged in no legitimate,—no

recognized operation of modern warfare ; unless it be legitimate for an invading army wholly to devastate a hostile country, leaving behind it a smoking desert only. On the ocean, the archaic principle still obtains that the immunity of private property from capture or destruction is confined to times of peace ; and, when war intervenes, mankind reverts to piracy, as the natural condition of maritime life. So the commerce-destroyers were not pirates,—common enemies of mankind ; but, as a result of the Treaty of Washington, a new and broad principle will inevitably, in some now not remote hereafter, replace this relic of barbarism,—the principle that private property, not contraband of war, is as much entitled to immunity from destruction or capture on water as on land. It is, accordingly, not unsafe even now to predict that the *Florida*, the *Alabama* and the *Shenandoah* will go down in history, not as pirates, but as the last lineal survivors of the black-flagged banditti of the olden time. If this so prove, it will then be apparent that the Treaty of Washington supplemented the Proclamation of Emancipation, rounding out and completing the work of our Civil War. The verdict of history on that great conflict must then be that the blood and treasure so freely poured out by us between Sumter and Appomattox were not expended in vain ; for, through it, and because of it, the last vestiges of piracy vanished from the ocean, as slavery had before disappeared from the land.







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